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SUPREME COURT, U. S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1963

No. 23

B. A. REYNOLDS, ETC., ET AL., APPELLANTS,

vs.

M. O. SIMS, ET AL.

No. 27

DAVID J. VANN AND ROBERT S. VANCE, APPELLANTS,

vs.

BETTYE FRINK, SECRETARY OF STATE OF THE STATE OF ALABAMA, ET AL.

No. 41

JOHN W. McCONNELL, JR., ET AL., APPELLANTS,

vs.

BETTYE FRINK, SECRETARY OF STATE OF ALABAMA, ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA

NO. 23 FILED OCTOBER 12, 1962
NO. 27 FILED OCTOBER 19, 1962
NO. 41 FILED NOVEMBER 23, 1962

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[fol. 29] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
(NORTHERN DIVISION)
Civil Action No. 1744-M

M. O. SIMS, FRED A. BEAM, WYLIE JOHNSON, G. R. SOUTHARD, MILES S. LEE, PAUL FRIEDMAN, WM. LINDSAY WILLIAMS, WILLIAM P. SHAW, JR., PRENTICE W. THOMAS, RICHARD D. TANNEHILL, PAUL M. BYRNE, DAVID R. BAKER, CHARLES MORGAN, JR., and GEORGE PEACH TAYLOR, for themselves, jointly and severally, and for all others similarly situated, Plaintiffs,

vs.

BETTYE FRINK, Secretary of State of the State of Alabama; HARRELL HAMMONDS, Judge of Probate of Lowndes County, Alabama; JOHN A. SANKEY, Judge of Probate of Montgomery County, Alabama; J. PAUL MEEKS, Judge of Probate of Jefferson County, Alabama; C. O. VARDAMAN, Chairman of the Alabama State Republican Executive Committee; O. P. DRAKE, Secretary of the Alabama State Republican Executive Committee; SAM ENGLEHARDT, Chairman of the Alabama State Democratic Executive Committee; H. G. RAINS, Secretary of the Alabama State Democratic Executive Committee; MACDONALD GALLION, Attorney General of the State of Alabama; and their successors in each such office, Defendants.

AMENDED COMPLAINT—Filed August 26, 1961

Come the plaintiffs, M. O. Sims, Fred A. Beam, Wylie Johnson, G. R. Southard, Miles S. Lee, Paud Friedman, Wm. Lindsay Williams, William P. Shaw, Jr., Prentice W. Thomas, Richard D. Tannehill, Paul M. Byrne, David R. Baker, Charles Morgan, Jr., and George Peach Taylor,

who, in accordance with Rule 15 (a) of the Federal Rules of Civil Procedure, hereby amend the style of their complaint to read as aforesaid, and hereby amend their complaint to read as follows:
[fol. 30]

I

A. That this Court has original jurisdiction of this action, and that the plaintiffs have the right to bring this suit under the Civil Rights Act, 17 Stat. L. 13, and 16 Stat. L. 144; 42 U.S. Code, §§1983 and 1988, as follows:

"Section 1983. Civil action for deprivation of rights.

Every person who, under color or any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in any action at law, suit in equity or other proper proceeding for redress." (R.S. Sec. 1979)

"Section 1988. Proceedings in vindication of civil rights. The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, . . ." (R.S. Sec. 722)

B. Additionally, this Court has jurisdiction under 62 Stat. L. 932, 28 U.S. Code, §1343(3). This sections reads as follows:

"Section 1343. Civil rights.

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:—

• • • • • • •

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom, or usage, of any right, privilege or immunity secured by

the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."

II

That, under 62 Stat. L. 968; 28 U.S. Code, §2281 et seq., special provision is made for hearing causes of action involving restraining the enforcement, operation or execution of any state statute by restraining the action of any officer of such state whenever said application is based on the [fol. 31] unconstitutionality of such statute.

III

That each of the plaintiffs is a citizen of the United States and of the State of Alabama and of Jefferson County, and, as a taxpayer and a duly qualified and registered voter, in said State and County, is entitled to vote in primary, general and special elections for the members of the Legislature of the State of Alabama.

That the aforenamed plaintiffs jointly and severally bring this action on their own behalf and on behalf of all other voters in the State of Alabama, who are similarly situated.

IV

That the defendants are all citizens of the United States of America and of the State of Alabama, residing within the said State, in particular:

Defendant, Bettye Frink, is the duly elected, qualified and acting Secretary of State of the State of Alabama, with her office in the City of Montgomery, Montgomery County, in said State. The Secretary of State of the State of Alabama is a constitutional officer, a part of the executive branch of the government of the State (§112 of Article V of the Alabama Constitution of 1901), is the person to whom all returns of elections for members of the legislature must be made (Ibid, §193), and "shall perform such duties as may be prescribed by law" (Ibid, §137; See also §134).

Among other duties, the Secretary of State of the State of Alabama is charged by law to:

Keep papers belonging to the legislature (Title 32, §§7, 10 and 29, Alabama Code of 1940, as amended) and engrossed copies of laws and joint resolutions (Ibid, §8); perform sundry duties, including the performance of ". . . such other duties as he is or may be required by law to perform" (Title 55, §182, Alabama Code of 1940, as amended); see also Ibid, §§183-204; receive and preserve packages of ballots as well as written requests therefor [fol. 32] from those appointed to decide election contests (Title 17, §64(28), Alabama Code of 1940, as amended); receive certificates of nomination by political parties as well as petitions of electors to nominate independent candidates and to certify the names of such nominees to the various judges of probate (Ibid, §145); receive returns of election and to be present for the opening and counting of those so received, the governor or attorney general also to be present thereat (Ibid, §201); furnish certificates of election to members of the legislature (Ibid, §205); furnish blank certificates of the results of elections for members of the legislature and receive same back when filled out (Ibid, §209); perform duties required for general elections in special elections (Ibid, §221); receive the names of members of a committee to receive, expend, audit and disburse campaign contributions (Ibid, §274); receive the certification of candidates for nomination to the legislature and certify same to the probate judges (Title 17, §344, Alabama Code of 1940, as amended); receive notice of the entering of a primary election by the state executive committee or other governing authority of a political party (Ibid, §346); receive certification from the chairman of the state executive committee of a political party as to the names of nominees not having a majority, but running first and second in the first primary election and, in turn certifying those names to the various probate judges whose counties are affected thereby (Ibid, §366); certify to the probate judge lists of the nominees of political parties (Ibid, §369); notify probate judges of the results of election contests before the state executive committee of a political party (Ibid, §387).

Defendants, Harrell Hammonds, John A. Sankey and J. Paul Meeks are the duly elected, qualified and acting Probate Judges of Lowndes, Montgomery and Jefferson Counties, respectively. Judges of Probate of the State of Alabama are constitutional officers and are a part of the judicial branch of government (§139 of Article VI of the Alabama Constitution of 1901). A judge of probate has [fol. 33] authority "to exercise such other powers as are, or may be, conferred on him by law" (Title 13, §297, Alabama Code of 1940, as amended; see also Ibid, §§271-312). Among other duties of probate judges they are charged by law to:

Cause to be delivered to each polling place alphabetical lists of those who have paid their poll tax and those who are registered to vote thereat (Title 17, §138, Alabama Code of 1940, as amended); receive and preserve for a time, one copy of the certificate of results of an election (Ibid, §139); receive certification of nominations by political parties for state legislative offices as well as certification of those independent candidates properly nominated therefor by petitions of electors and he causes the names of such nominees to be printed upon the ballots utilized in his county (Ibid, §145); receive from candidates not accepting their nominations notification to that effect (Ibid, §148); preserve all certificates and petitions for nomination for six months after the election (Ibid, §168); cause the printing of voter instruction cards (Ibid, §165); ballots, blank poll lists, certificates of results, oaths, and all other stationery and blank forms necessary to conduct the election and cause the foregoing to be properly distributed (Ibid, §186); assemble, with others, and make a correct statement of election results (Ibid, §199); receive the original public declaration of the results of an election of members of the house of representatives and to record same and provide certified copies thereof and to allow a copy thereof to be posted on the courthouse door (Ibid, §200); receive and forward to the secretary of state certificates setting forth the returns of election for members of the legislature (Ibid, §209); to perform duties required for general elections in special elections (Ibid, §221); receive the names of members of a

committee to receive, expend, audit and disburse campaign contributions (Ibid, §274) and receive from it detailed, itemized statements of expenditures made (Ibid, §278) with an affidavit of the candidate attached thereto (Ibid, §280); [fol. 34] prepare and distribute ballots for the primary elections (Ibid, §§344, 366); furnish to the officers of a primary election a copy of the official list of voters and other election supplies as well as envelopes (Ibid, §354); supply voters whose votes are challenged with certificates to the effect that such voters names are on official voters lists (Ibid, §355); allow his office to be utilized as the proper place for receipt of ballot boxes by the county chairman of a political party (Ibid, §363); receive from the secretary of state lists of the nominees of the political parties (Ibid, §369); furnish certified copies of the registration lists and lists of poll tax payers to the parties to an election contest (Ibid, §377); receive notification of the results of election contests before the state executive committee of a political party (Ibid, §387); accept expense accounts of candidates for the legislature (Ibid, §400).

Defendants, C. O. Vardaman and Sam Engelhardt are the duly elected, qualified and acting chairmen of the Alabama State Republican Executive Committee and of the Alabama State Democratic Executive Committee, respectively, residing in Jefferson and Montgomery Counties, respectively. Among other duties chairmen of the state executive committee of a political party in Alabama are charged by law to:

Certify an election not to come under the primary election law (Title 17, §336, Alabama Code of 1940, as amended); certify to the secretary of state the names of candidates for nomination to the legislature (Ibid, §344); receive declarations of candidacy and fees therefor from candidates for the legislature (Ibid, §348); receive a copy of certificates of results of elections from inspectors and clerks at each and every election district or precinct in the state (Ibid, §365); receive the tabulation of the first and second primary elections results from the county chairman of his [fol. 35] political party, accept the declination of a nomination for office by a candidate therefor, appoint a sub-

committee of the state executive committee to receive such returns, canvass and tabulate them, and certify to the secretary of state the results of such primary elections as well as the nominee victorious therein (Ibid, §366); decide who shall be the nominee in the event of a tie vote (Ibid, §367); receive statements of contests of nominations, notify contestees thereof (Ibid, §384), file statements with reference thereto in the office of the circuit clerk of the county of residence of the contestee (Ibid, §385); call a meeting of the state executive committee to hear the charges against the contestee or appoint a subcommittee therefor (Ibid, §386); administer oaths to witnesses and accept deposits sufficient to pay the cost of the summoning of them (Ibid, §390); appoint a commissioner to take testimony and accept deposits to pay therefor (Ibid, §391); summon witnesses (Ibid, §392) and to notify the secretary of state of the results of any such contest (Ibid, §387); appoint, when authorized and empowered by the state executive committee of a political party, subcommittees to look after, supervise and conduct primary elections and do any and all things which the state executive committee and the chairman thereof could do under the provisions of Chapter 2 of Title 17, Alabama Code of 1940, as amended (Ibid, §394).

Defendants O. P. Drake and H. G. Rains are the duly elected, qualified and acting secretaries of the Alabama State Republican Executive Committee and the Alabama State Democratic Executive Committee, respectively, and reside in Winston and Etowah counties, respectively. Among other duties, the secretary of the state executive committee of a political party in Alabama is charged by law with the duty of certifying an election by the political party not to come under the primary election law (Title 17, §366, Alabama Code of 1940, as amended).

[fol. 36] Defendant, MacDonald Gallion, is the duly elected, qualified and acting Attorney General of the State of Alabama, with his office in the City of Montgomery, Montgomery County, in said state. The attorney general of Alabama is a constitutional officer, a part of the executive branch of the government of that state (§112 of Article V of the Alabama Constitution of 1901), and "shall per-

form such duties as may be prescribed by law." (Ibid, §137). Among other duties of the attorney general of Alabama, he is charged by law to:

Appear in the courts of the United States when so required by the Governor, in writing (Title 55, §228, Alabama Code of 1940, as amended); institute and to prosecute all civil actions necessary to protect the rights of the state (Ibid, §229); advise probate judges (Ibid, §240); the secretary of state and other state departments (Ibid, §228) as to the law and a written opinion from him protects the state or county officer receiving it from liability for official acts performed in accordance therewith (Ibid, §241); direct and control all litigation concerning the interests of the state or a department thereof and (with the approval of the governor) to hire counsel therefor (Ibid, §[illegible]); be present, in company with the governor or secretary of state for the official canvass (the opening and counting) of all returns of elections required by law to be sent to the secretary of state (Title 17, §201, Alabama Code of 1940, as amended).

That this action is brought against the aforenamed defendants in their representative capacities, and that said judges of probate are sued individually and also as representatives of all of the judges of probate in the state of Alabama, such persons being so numerous as to make it impracticable to bring them all before the court; that there is a common question of law involved, namely, the constitutionality of Sections 1 and 2 of Title 32, Alabama Code of 1940, as amended and Sections 202 and 203 of Article 9 of the Alabama Constitution of 1901 and of the apportionment of the legislature of Alabama under the [fol. 37] aforementioned provisions of the Alabama Code and Constitution, that common relief is sought against all judges of probate in their official capacities their duties having been hereinbefore set forth.

V

That plaintiffs are now denied the right to equal suffrage in free and equal elections, which right is granted them by the Constitution of the State of Alabama, and the equal

protection of the laws, as guaranteed by both the Constitution of the State of Alabama and by the Fourteenth Amendment to the Constitution of the United States, and they bring this action on their own behalf and on behalf of all duly registered and qualified voters of Jefferson County, and further, on behalf of all duly registered and qualified voters of the State of Alabama who are similarly situated under the provisions of Title 28, U. S. C., Section 2201 for a declaration of their rights and a declaration of the validity or invalidity of the private or public acts or statutes which apportion the representatives and senators among the counties of the State of Alabama, and the apportionment thereunder, and for such injunctive relief as may be proper to assure them and all other voters of the State of Alabama free and equal suffrage, liberty, and property, and equal protection of the laws which are now and have been for many years denied them by the defendants and their predecessors in office who have complied with certain unconstitutional statutes, acts and practices, all of which are more particularly set forth herein.

VI

That Article 14, Section 1 of the United States Constitution provides, in part, as follows:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

[fol. 38] This provision of the Constitution of the United States contains a guarantee to the citizens of the right to vote in state elections and further guarantees them that their votes shall be equally effective with any other votes cast in said state elections.

VII

That the Constitution and laws of the State of Alabama and of the United States of America establish, define and

guarantee to these plaintiffs, as well as to all other voters of the State of Alabama, free and equal suffrage in free and equal elections.

(1) Section 2 of Article 1 of the Alabama Constitution of 1901 invests all political power in the people.

> That all political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit; and that, therefore, they have at all times an inalienable and indefeasible right to change their form of government in such manner as they may deem expedient.

(2) Section 177 of Article 7 of the Constitution of Alabama of 1901 defines qualified voters who are guaranteed the right to free and equal elections and suffrage.

> Every male citizen of this state who is a citizen of the United States, and every male resident of foreign birth, who, before the ratification of this constitution, shall have legally declared his intention to become a citizen of the United States, twenty-one years old or upwards, not laboring under any of the disabilities named in this article, and possessing the qualifications required by it, shall be an elector, and shall be entitled to vote at any election by the people; provided, that all foreigners who have legally declared their intention to become citizens of the United States, shall, if they fail to become citizens thereof at the time they are entitled to become such, cease to have the right to vote until they become such citizens.

(3) That the right of free and equal suffrage is further guaranteed by Section 33 of Article 1 of the Constitution of Alabama of 1901.

> The privilege of suffrage shall be protected by laws regulating elections, and prohibiting, under adequate penalties, all undue influences from power, bribery, tumult, or other improper conduct.

[fol. 39] (4) The time of holding said elections is established by Section 46 of Article 4 of the Constitution of Alabama of 1901.

> Senators and representatives shall be elected by the qualified electors on the first Tuesday after the first Monday unless the legislature shall change the time of holding elections and in every fourth year thereafter.

(5) That the right of free and equal suffrage is guaranteed by Section 25 of Article 1 of the Constitution of Alabama of 1901.

> That the citizens have a right, in a peaceable manner, to assemble together for the common good, and to apply to those invested with the power of government for redress of grievances or other purposes, by petition, address, or remonstrance.

(6) That the right of free and equal suffrage is further guaranteed by Section 36 of Article 1 of the Constitution of Alabama of 1901.

> That this enumeration of certain rights shall not impair or deny others retained by the people; and, to guard against any encroachments on the rights herein retained, we declare that everything in this Declaration of Rights is excepted out of the general powers of government, and shall forever remain inviolate.

(7) That the right of free and equal suffrage is further guaranteed by Section 43 of Article 3 of the Constitution of Alabama of 1901.

> In the government of this state, except in the instances in this Constitution hereinafter expressly directed or permitted, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end that it may be a government of laws and not of men.

(8) That the right of free and equal suffrage is further guaranteed by Section 12 of Title 17 of the Alabama Code of 1940, as amended.

> Qualification of elector to vote. Every citizen of this state who is a citizen of the United States and every resident of foreign birth, who, before the ratification [fol. 40] of the present Constitution of the state, shall have legally declared his or her intention to become a citizen of the United States, twenty-one years old or upwards, not laboring under any of the disabilities named in section 15 of this title, and who shall have resided in this state at least one year, in the county six months, and in the precinct or ward three months, immediately preceding the election at which he offers to vote, and who shall have been duly registered as an elector, and shall have paid, on or before the first day of February next preceding the date of the election at which he or she offers to vote, all poll taxes due from them for the next two preceding years, shall be an elector, and shall be entitled to vote at any election by the people.

(9) That the right of free and equal suffrage is further guaranteed by Section 156 of Title 17 of the Alabama Code of 1940, as amended.

> Secret ballot. Every voter in Alabama shall have the right to vote a secret ballot, and that ballot shall be kept secret and inviolate.

(10) The following Sections of the Alabama Constitution of 1901 prescribe the number of members of the Senate and House of Representatives of the Legislature of Alabama and the formula and method of apportioning the members of the Legislature among the Counties of the State:

> Section 50. The Legislature shall consist of not more than thirty-five Senators, and not more than one hundred and five members of the House of Representatives, to be apportioned among the several districts and counties as prescribed in this Constitution; pro-

vided that in addition to the above number of Representatives each new county hereafter created shall be entitled to one Representative.

Section 197. The whole number of Senators shall be not less than one-fourth, or more than one-third of the whole number of Representatives.

Section 198. The House of Representatives shall consist of not more than one hundred and five members unless new counties shall be created, in which event each new county shall be entitled to one representative. The members of the House of Representatives shall be apportioned by the Legislature among the several counties of the State, according to the number of inhabitants in them respectively, as ascertained by the decennial census of the United States, which appor- [fol. 41] tionment when made shall not be subject to alteration until the next session of the Legislature after the next decennial census of the United States shall have been taken.

Section 199. It shall be the duty of the Legislature at its first session after the taking of the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the number of Representatives, and apportion them among the several counties of the state, according to the number of inhabitants in them respectively; provided, that each county shall be entitled to at least one Representative.

Section 200. It shall be the duty of the Legislature at its first session after taking the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the number of Senators and to divide the State into as many Senatorial districts as there are Senators, which districts shall be as nearly equal to each other in the number of inhabitants as may be, and each shall be entitled to one Senator, and no more; and such districts when formed, shall not be changed until the next apportioning session of the Legislature,

after the next decennial census of the United States shall have been taken; provided, that counties created after the next preceding apportioning session of the Legislature may be attached to Senatorial districts. No county shall be divided between two districts, and no district shall be made up of two or more counties not contiguous to each other.

Section 201. Should any decennial census of the United States not be taken, or if when taken, the same, as to this State, be not full and satisfactory, the Legislature shall have power at its first session after the time shall have elapsed for the taking of said census, to provide for an enumeration of all the inhabitants of this State, upon which it shall be the duty of the Legislature to make the apportionment of Representatives and Senators as provided for in this article.

Section 284. . . . Representation in the Legislature shall be based upon population, and such basis of representation shall not be changed by constitutional amendment.

VIII

That the plaintiffs, as citizens of the United States and of the State of Alabama, have the right conferred by the Constitution of Alabama of 1901 to have the entire membership of the Alabama Legislature reapportioned and elected on the basis of the 1960 Federal Census.

[fol. 42] That the Constitution of Alabama of 1901 guarantees the rights of these plaintiffs and all other registered and qualified voters of the State of Alabama to equal suffrage in free and equal elections as established by said Constitution.

That the Alabama Legislature is forbidden by Sections 2, 22, 25, 33 and 36 of Article 1 and by Section 43 of Article 3 and by Section 279 of Article 16 of the Alabama Constitution of 1901 to deprive these plaintiffs and all other qualified voters of the State of Alabama of equal suffrage in free and equal elections.

Section 2. That all political power is inherent in the people, and all free governments are founded on their

authority, and instituted for their benefit; and that, therefore, they have at all times an inalienable and indefeasible right to change their form of government in such manner as they may deem expedient.

Section 22. That no ex post facto law, nor any law, impairing the obligations of contracts, or making any irrevocable or exclusive grants of special privileges or immunities, shall be passed by the legislature; and every grant or franchise, privilege, or immunity shall forever remain subject to revocation, alteration, or amendment.

Section 25. That the citizens have a right, in a peaceable manner, to assemble together for the common good, and to apply to those invested with the power of government for redress of grievances or other purposes, by petition, address, or remonstrance.

Section 33. The privilege of suffrage shall be protected by laws regulating elections, and prohibiting, under adequate penalties, all undue influences from power, bribery, tumult, or other improper conduct.

Section 36. That this enumeration of certain rights shall not impair or deny others retained by the people; and, to guard against any encroachments on the rights herein retained, we declare that everything in this Declaration of Rights is excepted out of the general powers of government, and shall forever remain inviolate.

Section 43. In the government of this state, except in the instances in this Constitution hereinafter expressly directed or permitted, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end that it may be a government of laws and not of men.

[fol. 43] Section 279. All members of the legislature, and all officers, executive and judicial, before they enter upon the execution of the duties of their respec-

tive offices, shall take the following oath or affirmation:

"I, ..., solemnly swear (or affirm, as the case may be) that I will support the constitution of the United States, and the constitution of the State of Alabama, so long as I continue a citizen thereof; and that I will faithfully and honestly discharge the duties of the office upon which I am about to enter, to the best of my ability. So help me God."

The oath may be administered by the presiding officer of either house of the legislature, or by any officer authorized by law to administer an oath.

IX

That the last actual apportionment of the senatorial and representative districts of the Legislature of Alabama was based on the 1900 Federal Census and was established by Sections 202 and 203 of Article 9 of the Constitution of Alabama of 1901. There have been six decennial Federal enumerations of the population of the State of Alabama since 1900, namely in the years 1910, 1920, 1930, 1940, 1950 and 1960. After no such decennial Federal Census has there been a determination that said census as to this State was not full and satisfactory nor has the State of Alabama provided for the enumeration of its residents after any such decennial Federal Census. All Alabama Legislatures after each such enumeration have been under a constitutional mandate (in accordance with their oaths of office to support the Constitution of the United States and the Constitution of Alabama of 1901, set forth in Section 279 of Article 16 of the Constitution of Alabama of 1901) to reapportion said senatorial and representative districts in accordance with the result of the latest available enumeration. Since the Federal Census of 1910, there have been numerous regular and special sessions of Alabama legislatures; however, each and every such legislature, including the present legislature up to the time of the filing of this complaint, has failed to reapportion the [fol. 44] number of members of the house of representa-

tives among the several counties of the State and has failed to reapportion the number of members of the senate of the State and to readjust and alter the boundaries of the several senatorial districts of the State.

That the provisions of Sections 1 and 2, Title 32, Code of Alabama of 1940, as amended, which became effective on May 31, 1941, and the continued apportionment of the Legislature of Alabama under the provisions of Sections 202 and 203 of Article 9 of the Constitution of Alabama of 1901 are unconstitutional.

That the provisions of said Sections 1 and 2 are in the exact language of Sections 1507 and 1508 of the Code of 1923, which sections are in the exact language of Sections 900 and 901 of the Code of 1907. The apportionment provided for in Sections 900 and 901 of the Code of 1907 is the same that was provided in Sections 202 and 203 of the Constitution of 1901, except in the following respects: Section 202 of the said Constitution provided for only 105 members of the house of representatives. In 1903, Houston County was created out of the counties of Henry, Dale and Geneva (Gen. Acts of Ala. (1903) p. 44). Under the provisions of Section 50 of the Constitution, the newly created county of Houston became entitled to one representative. Therefore, Section 900 of the Code of 1907 provided, in effect, that there should be 106 members of the house of representatives and that Houston County should be entitled to one representative. Section 901 of the Code of 1907 shows that the newly created county of Houston became a part of the thirty-fifth senatorial district, which, under the provisions of Section 203 of the Constitution, consisted only of Henry County.

That the population of the various counties of this state has changed during the years which have intervened since the Constitution of Alabama of 1901 was adopted, so that the representation as provided in Sections 1 and 2 of Title 32, Code of 1940, cannot be said to be on a population basis. [fol. 45] That these plaintiffs and all others similarly situated possess the inherent right to vote for members of the Alabama Legislature and to cast votes that are equally effective with the votes of every other citizen of said State, that said rights are both recognized and guaranteed by the

Constitution of the United States and the Constitution of Alabama of 1901, but that, because of population changes since 1900 (as shown by Exhibits A and B which are attached hereto and by such attachment hereto and reference thereto are thereby made a part hereof) and the failure of the Legislature to reapportion itself since 1901, the plaintiffs' votes are not as effective as the votes of the voters residing in rural senatorial and representative districts in the State of Alabama. The population of the State of Alabama in 1900, based on the Federal Census of that year, was 1,828,687, while the population in 1960, based on the Federal Census of that year was 3,266,740, and that the growth of the various counties of the State during the sixty year period next preceding the year 1960 has been varied and uneven as is shown by said Exhibits A and B.

That the present apportionment of the State Legislature of the State of Alabama ran its course and became unconstitutional, obsolete and discriminatory in 1911 by virtue of the explicit requirements of Sections 197 through 201, inclusive, of Article 9 of the Constitution of Alabama of 1901.

That said apportionment denies to the people of Jefferson County and other urban counties the additional number of Representatives and Senators to which they are entitled to vote by virtue of the fact that Jefferson County and many other counties have had a sufficient number of people since 1960, and prior thereto, as shown by Exhibits A and B, to entitle them to additional representatives and senators, and, therefore, the distribution of Senators and Representatives is arbitrary and contrary to the provisions of the Constitution of Alabama of 1901.

[fol. 46]

That Exhibits A and B are illustrative of the discrimination now made among the various representative and senatorial districts of the State of Alabama; that when all inequalities are taken together, the violations of the particular constitutional provisions as set out above, result in a distortion and emasculation of the constitutional system established, defined, and guaranteed by the Constitution of Alabama of 1901 and the Fourteenth Amendment to the Constitution of the United States; that this distortion of said constitutional system of selecting membership of the

Legislature prevents it, as it is now composed, from being a body representative of the people of the State of Alabama, since a minority of 23.3 per cent of the population of the State now controls more than fifty (50) per cent of the membership of the house of representatives, and a minority of 25.0 per cent of the population of the State now controls more than fifty (50) per cent of the membership of the State; and that thus a minority now rules in Alabama by virtue of its control of both Houses of the Legislature, contrary to the rudimentary principles of representative government.

That to further illustrate the inequalities of the present unconstitutional apportionment of the Legislature of the State of Alabama the County of Lowndes, Alabama, with a population of 15,417 according to the 1960 Federal Census has two members of the House of Representatives and one member of the Senate. The County of Jefferson, Alabama, has a population of 634,864 according to the 1960 Federal Census and has seven members of the House of Representatives and one member of the Senate. Each Representative in Jefferson County represents 90,695 people. In Lowndes County each Representative represents 7,709 people. The Senator from Jefferson County represents 634,864 people. The Senator from Lowndes County represents 15,417 people.

The present mal-apportionment of Senatorial Districts results in Districts 1, 4, 6, 11, 13, 21, 28 and 33 having a total of only eight members of the Senate (22.9 per cent [fol. 47] of the total senate vote) yet they contain more than fifty (50) per cent of the population of Alabama.

In the House of Representatives the counties of Mobile, Jefferson, Madison, Tuscaloosa, Houston, Baldwin, Etowah, Marshall, Calhoun, Colbert, Cullman and DeKalb have a total of only twenty-four votes (22.6 per cent of the total house vote) but contain more than fifty (50) per cent of the population of Alabama.

In the House of Representatives the counties of Barbour, Bullock, Butler, Hall, Henry, Clarke, Elmore, Marengo, Pike, Lowndes, Perry, Wilcox and Sumter each have two members of the House of Representatives but the highest

population of any one of such counties is 30,524, the lowest population of any one of each county being 13,462.

In the Senate the counties of Lowndes, Wilcox, Barbour and Marengo comprise separate senatorial districts, being the sixteenth, twenty-second, twenty-fourth, and twentieth, respectively. The population of these counties is 15,417, 18,739, 24,700 and 27,098, respectively. Etowah County, with a population of 96,980, is joined with another, county, St. Clair, with a population of 25,388, to form the sixth district. Many counties with population in excess of that of Lowndes, Wilcox, Barbour or Marengo are joined with one or two other counties to form such senatorial districts.

X

That the Legislature of Alabama has adjourned each of its regular and special sessions since the year 1911 without passing any bill or resolution to reapportion itself in conformity with the Constitution of Alabama of 1901, although a number of bills or resolutions for such purpose have been from time to time introduced during said sessions.

That the Legislature of Alabama is presently in regular session and although several bills have been introduced to reapportion the Legislature of Alabama during said session [fol. 48] no bill to effect compliance with the Constitution of Alabama of 1901 has been passed nor is any such bill presently pending in such Legislature which has not been defeated or tabled to the end of this session and thereby effectively defeated; and that, by its course of conduct for a period of years extending from 1911 through the date of filing of this complaint, inclusive, the Legislature of Alabama has established a pattern and course of conduct that clearly demonstrates that no reapportionment in accordance with the Constitution of Alabama of 1901 shall be effected by the said Legislature, either during this session or ever thereafter. That Section 286 of Article 18 of the Constitution of Alabama of 1901 provides the only mode and method of calling a constitutional convention in Alabama:

> No convention shall hereafter be held for the purpose of altering or amending the constitution of this state,

unless after the legislature by a vote of a majority of all the members elected to each house has passed an act or resolution calling a convention for such purpose the question of convention or no convention shall be first submitted to a vote of all the qualified electors of the state, and approved by a majority of those voting at such election. No act or resolution of the legislature calling a convention for the purpose of altering or amending the constitution of this state, shall be repealed except upon the vote of a majority of all the members elected to each house at the same session at which such act or resolution was passed; provided, nothing herein contained shall be construed as restricting the jurisdiction and power of the convention, when duly assembled in pursuance of this section, to establish such ordinances and to do and perform such things as to the convention may seem necessary or proper for the purpose of altering, revising, or amending the existing constitution.

That representation at any constitutional convention called by the Legislature of Alabama would be established by the said Legislature and, it is extremely unlikely that the representation at and membership of any such constitutional convention would differ from that of the Legislature of Alabama.

That the Supreme Court of Alabama has ruled that the present apportionment of the Legislature of Alabama is unconstitutional, but that it will not interfere with such [fol. 49] apportionment. That all forms of relief for plaintiffs have been heretofore exhausted and that this Honorable Court is the last and only authority to which the people of Alabama may look for relief.

XI

That a vote on an amendment to the Constitution of Alabama of 1901 is counted and returned in the same manner as is the vote for members of the legislature. (Title 17, Sec. 210, Alabama Code of 1940, as amended.) The secretary of state is charged with the duties of receiving the

returns of any such vote from the returning officers of each county together with a certificate of the total number of qualified electors who voted in such election (Ibid, Sec. 211) and, in the presence of both the governor and attorney general or either of them, opening such returns and ascertaining whether a majority voted in favor of an amendment (Ibid, §212).

That the plaintiffs are informed, and believe, and based upon such information and belief do aver that at least two legislative reapportionment bills calling for amendments to the Constitution of Alabama of 1901, one submitted by the senator from the twenty-second senatorial district (who represents 18,739 people), and the other submitted by the senator from the ninth senatorial district (who represents 57,305 people), neither such bill complying with the requirements of Section 50 of Article IV, Sections 197 through 201, inclusive, of Article IX, and Section 284 of Article XVIII of the Constitution of Alabama of 1901 have been introduced into the Senate of Alabama and have been approved by the appropriate committee or committees thereof and that such approval by such committee or committees occurred on or about the 21st day of August, 1961, a date after the date of filing of this suit. That both such bills provide for amendments to the Constitution of Alabama of 1901 and would alter, change, amend, or otherwise eliminate the present provisions of the Constitution of Alabama of 1910 which require apportionment of the legislature of Alabama be based upon population.

[fol. 50] That any amendment or amendments to all or any of Section 50 of Article IV or Sections 197 through 201, inclusive, of Article IX or Section 284 of Article XVIII of the Constitution of Alabama of 1901 proposed by the present malapportioned legislature of the state of Alabama which alter, change, amend, or otherwise eliminate the present mandate of the Constitution of Alabama of 1901 that the apportionment of the Legislature of Alabama be based on population will be void, illegal and unconstitutional, and, during the pendency of this suit, would tend to effect and interference with the proper and due administration of justice.

[fol. 51] XII

That Section 4 of Article 4 of the Constitution of the United States contains provisions for a republican form of government.

> The United States shall guarantee to every State in this Union a Republican Form of government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence.

That the admission of the State of Alabama into the Union was enabled by an Act of Congress approved March 2, 1819 (3 Stat. L. 489) which provided, in part:

> . . . if it be determined to be expedient [the formation of a constitution and state government], *Provided*, that the same, when formed shall be republican. . . .

That by resolution approved December 14, 1819, Alabama was declared admitted into the Union such resolution stating, in part:

> . . . the people of the said territory did, on the second day of August, in the present year, by a convention called for that purpose, form for themselves a constitution and state government, which constitution and state government, so formed, is republican, and in conformity to the principles of the articles of compact between the original states and the people and states in the territory northwest of the river Ohio, passed on the thirteenth day of July, one thousand seven hundred and eight-seven, so far as the same have been extended to the said territory by the articles of agreement between the United States and the state of Georgia. . . . (3 Stat. L. 608)

That what is known as the Constitution of 1868, did not become the Constitution of Alabama until it was approved by the Congress of the United States which was done on

June 25, 1868, when the President's veto of the "act to admit the States of North Carolina, South Carolina, Georgia, Alabama and Florida, to representation in Congress," the preamble of which stated in part, that such other states had:

> . . . framed constitutions of State government which are republican, and have adopted said constitutions by large majorities of the vote cast at the elections held for the ratification or rejection of the same. (15 Stat. L. 73-4)

[fol. 52] was overriden by Congress.

That each of the aforementioned repeated guarantees of a republican form of government are continuing yet have been violated by the mal-apportionment of the Legislature of Alabama in the manner herein elsewhere stated and by the continued abuse of the rights of the plaintiffs and others similarly situated under both the Constitution of Alabama of 1901, and the Constitution of the United States.

XIII

That the Legislature of Alabama for a number of years unjustly discriminated against plaintiffs and others similarly situated in the larger urban areas of Alabama in the allocation of the burdens of taxation and in the unequal and unjust distribution of funds derived by the State through the exercise of its taxing power, as represented by statutes passed to raise and distribute revenues. Said discrimination, involving taxation without fair representation is shown principally by measures for the support of the public schools of the State, counties, municipalities, and school districts, and for the maintenance of roads and highways, and for other purposes. The said Legislature, over a period of years, has enacted and has maintained an arbitrary, unreasonable and discriminatory formula for the making of contributions to the needs of County governments, in that, of the seven cents (7) collected by the State for the selling, use, or consumption, distributing, storing or withdrawal from storage of each gallon of gasoline, three

cents (3) is divided and distributed equally among the sixty-seven counties of the state pursuant to the following provisions of the Code of Alabama of 1940:

> Two-sevenths of the proceeds of the excise tax herein imposed, less cost of collecting and administering this article, shall be paid into the treasury to the credit of the sixty-seven counties in the state, and shall be divided and distributed equally among the sixty-seven counties of this state, payment to be made by state warrant to be mailed to the treasurer of such counties or repositories of such counties, on or before the tenth day of each month following collection. (Title 51, §655)
>
> [fol. 53] Two-sevenths of the proceeds of the excise tax herein imposed shall be divided monthly as collected, less the cost of collection, as follows: . . . The other one-half of said two-sevenths shall be divided equally among the sixty-seven counties of the State of Alabama monthly as collected, less the cost of collection, payment to be made to the county treasurer or depository of such counties on or before the tenth day of each month of the year, and said funds shall be used by the several counties of the state exclusively for the construction, maintenance, supervision and policing of the public roads and bridges in the respective counties. . . . (Title 51, §657)

In the allocation of sales and use taxes, alcoholic beverage taxes, income taxes, beer taxes, and other taxes levied on the people of the State of Alabama by such unlawfully apportioned Legislatures, the discriminations provided in said statutes have been made possible and effective by the failure or refusal of the Legislature of the State of Alabama to follow the mandates of the State Constitution requiring the reapportionment of the Legislature at the time of expiration of each ten year period after the year 1901.

XIV

That the defendants, or their successors in office, unless prevented by this Court, will perform their duties as they and their predecessors in office have performed those duties

for the fifty years next preceding the filing of this complaint, such duties having been performed in accordance with, under, and by virtue of Sections 1 and 2 of Title 32, Alabama Code of 1940, and Sections 202 and 203 of Article 9 of the Alabama Constitution of 1901, and the rights of these plaintiffs and all others similarly situated, can be protected only by a decree of this Court declaring Sections 1 and 2 of Title 32, Alabama Code of 1940, as amended, to be unconstitutional and further declaring the apportionment provided for in the said Alabama Code of 1940 and in the Alabama Constitution of 1901 to be unconstitutional and by enjoining the defendants from holding another unconstitutional election in 1962, or in any year thereafter, and by requiring either:

(a) that the defendants exercise their respective duties and prepare for the election of 1962 in such manner that the election will be held at large over the State [fol. 54] as a whole, whereby every qualified voter shall have the right to vote for every member of the Senate and House of Representatives to be elected to the 1963 Legislature, or

(b) that the defendants obey a decree of this Court reapportioning and redistricting the State by applying the formulae set out in the Alabama Constitution of 1901 by referring to the 1960 official Federal Census population figures of the various counties of the State unless and until the Legislature of the State of Alabama, by proper law, reapportions constitutionally the representatives and senators among the counties of the State.

Wherefore, Premises Considered, Plaintiffs respectfully pray that this Court take jurisdiction of this matter; that a special three-judge Court be called to hear and determine this cause as by law provided in 62 Stat. L. 968; 28 U.S.C. Sec. 2281, et seq., and declare the rights of the plaintiffs pursuant to 58 Stat. L. 890, 28 U.S.C. Sec. 2201, in the premises to-wit:

A. That the present legislative apportionment of the State of Alabama has deprived and continues to deprive the plaintiffs of liberty and property without due process of law and has denied and continues to deny the plaintiffs equal protection of the laws in violation of the Fourteenth Amendment of the Constitution of the United States.

B. That the apportionment of the Legislature of the State of Alabama as established under and by virtue of Sections 1 and 2 of Title 32 of the Alabama Code of 1940, as amended, and Sections 202 and 203 of Article 9 of the Constitution of Alabama of 1901 are void and invalid as being contrary to the continuing duty of the State of Alabama under the laws and Constitution of the United States to continue the establishment of a republican form of government, and contrary to the Fourteenth Amendment of the Constitution of the United States and the Constitution of Alabama of 1901 because of the failure to redistrict the counties forming senatorial districts and to reapportion the number of senators thereby and because of the failure to reappor- [fol. 55] tion the house of representatives of the Legislature of Alabama in accordance with present population as hereinbefore averred.

C. That the right of the plaintiffs to vote as guaranteed by the laws and Constitution of Alabama of 1901 and the Constitution of the United States has been impaired.

And plaintiffs further particularly pray that, after hearing of this action, the Court grant further relief in accordance with 62 Stat. L. 964, 28 U.S.C. Section 2202 as follows:

D. That the Legislature of Alabama may not propose an amendment to the Constitution of Alabama of 1901 which would effect a change, alteration or amendment of those provisions of the Constitution of Alabama of 1901 which establish population as the proper basis for districting and apportioning the Legislature until such time as the Legislature has redistricted and reapportioned itself in accordance therewith.

E. (1) That the defendant, Bettye Frink, individually and as Secretary of State of the State of Alabama, and her successors in said office, and her agents, officers and em-

ployees be enjoined and restrained from: receiving and preserving packages of ballots as well as written requests therefor from those appointed to decide election contests; receiving certificates of nomination by political parties as well as petitions of electors to nominate independent candidates; certifying the names of nominees of political parties to the various judges of probate; receiving returns of election and being present for the opening and counting of those so received; furnishing certificates of election to members of the legislature; furnishing blank certificates of the results of elections for members of the legislature and receiving same back when filled out; performing duties required for general elections in special elections; receiving the names of members of a committee to receive, expend, audit and disburse campaign contributions; receiving the certification of candidates for nomination to the legislature and certifying same to the judges of probate; receiv- [fol. 56] ing notice of the entering of a primary election given by the state executive committee or other governing authority of a political party; receiving certification from the chairman of the state executive committee of a political party as to the names of nominees not having a majority, but running first and second in the first primary election and certifying those names to the various probate judges whose counties are affected thereby; certifying to the judges of probate lists of the nominees of political parties; notifying judges of probate of the results of election contests before the state executive committee of a political party; insofar as such acts apply to primary, special and general elections of members of the Legislature of the State of Alabama until such time as the Legislature of Alabama reapportions itself in accordance with the applicable provisions of Sections 50, 197, 198, 199, 200, 201 and 284 of the Constitution of Alabama of 1901.

(2) That the defendants, Harrell Hammonds, John A. Sankey and J. Paul Meeks, individually, and as Judges of Probate and their successors in said office and their agents, officers and employees be enjoined and restrained from: causing to be delivered to each polling place alphabetical lists of those who have paid their poll tax and those who are

registered to vote thereat; receiving and preserving a copy or copies of the certificate of results of an election; receiving certification of nominations by political parties as well as certification of those independent candidates properly nominated as such by petitions of electors and causing the names of such nominees to be printed upon the ballots utilized in his county; receiving from candidates not accepting their nominations notification to that effect; preserving certificates and petitions for nominations; causing the printing of voter instruction cards, ballots, blank poll lists, certificates of results, oaths, and all other stationery and blank forms necessary to conduct elections and causing the foregoing to be properly distributed; assembling with others to make a correct statement of election results; re- [fol. 57] ceiving the original public declaration of the results of an election of members of the house of representatives and recording same and providing certified copies thereof and allowing a copy or copies thereof to be posted on the courthouse door; receiving and forwarding to the secretary of state certificates setting forth the returns of election for members of the legislature; performing duties required for general elections in special elections, receiving the names of members of a committee to receive, expend, audit and disburse campaign contributions and receiving detailed, itemized statements of expenditures made with an affidavit of the candidate attached thereto; preparing and distributing ballots for primary elections; furnishing to the officers of a primary election a copy of the official list of voters and other election supplies as well as envelopes; supplying voters whose votes are challenged with certificates to the effect that such voters names are on official voters lists; allowing their offices to be utilized as the proper place for receipt of ballot boxes by the county chairman of a political party; receiving from the secretary of state lists of the nominees of political parties; furnishing certified copies of registration lists and lists of poll tax payers to the parties to an election contest; receiving notification of the results of election contests before the state executive committee of a political party; accepting expense accounts of candidates; insofar as such acts apply to primary, special and general elections of members of the Legislature of the State of Ala-

bama until such time as the Legislature of Alabama reapportions itself in accordance with the applicable provisions of Sections 50, 197, 198, 199, 200, 201 and 284 of the Constitution of Alabama of 1901.

(3) That the defendant, C. O. Vardaman, individually, and as the chairman of the Alabama State Republican Executive Committee and his successors in such office, and that the defendant, Sam Engelhardt, individually, and as chairman of the Alabama State Democratic Executive Committee, and his successors in such office and the agents, [fol. 58] officers, and employees of each of them be enjoined and restrained from: certifying an election not to come under the primary election law; certifying to the secretary of state the names of candidates for nomination to the legislature; receiving declarations of candidacy and fees therefor from candidates for the legislature; a copy of certificates of results of elections from inspectors and clerks at each and every election district or precinct in the state; receiving the tabulation of the first and second primary elections result from the county chairman of the political parties; accepting the declination of a nomination for office by a candidate therefor, appointing a subcommittee of the state executive committee to receive such returns, canvass and tabulate them, and certifying to the secretary of state the results of such primary elections as well as the nominee victorious therein; deciding who shall be the nominee in the event of a tie vote; receiving statements of contests of nominations, notifying contestee thereof; filing statements with reference thereto in the office of the circuit clerk of the county of residence of the contestee; calling a meeting of the state executive committee to hear the charges against the contestee or appointing a subcommittee therefor; administering oaths to witnesses and accepting deposits sufficient to pay the cost of the summoning of them; appointing a commissioner to take testimony and accepting deposits to pay therefor; summoning witnesses and notifying the secretary of state of the results of any such contest; appointing subcommittees to look after, supervise and conduct primary elections and doing any and all things which the state executive committee and

the chairman thereof has or could exercise under the provisions of Chapter 2 of Title 17, Alabama Code of 1940, as amended. Insofar as such acts apply to primary, special and general elections of members of the Legislature of the State of Alabama until such time as the Legislature of Alabama reapportions itself in accordance with the ap- [fol. 59] plicable provisions of Sections 50, 197, 198, 199, 200, 201 and 284 of the Constitution of Alabama of 1901.

(4) That the defendant O. P. Drake, individually, and as Secretary of the Alabama State Republican Executive Committee and his successors in such office, and the defendant, H. G. Rains, individually, and as Secretary of the Alabama State Democratic Executive Committee, and his successors in such office and the agents, officers, and employees of each of them be enjoined and restrained from: certifying the election of each said committee not to have a primary election under the primary election law; insofar as such acts apply to members of the Legislature of the State of Alabama until such time as the Legislature of Alabama reapportions itself in accordance with the applicable provisions of Sections 50, 197, 198, 199, 200, 201 and 284 of the Constitution of Alabama of 1901.

(5) That the defendant, MacDonald Gallion, individually, and as Attorney General of the State of Alabama, and his successors in such office, and his agents, officers, assistants and employees, be enjoined and restrained from: advising probate judges, the secretary of state and other state departments as to the law of the State of Alabama and from the giving of a written or oral legal opinion contrary to such decision of this Court and from being present, in company with the governor or secretary of state for the official canvass (the opening and counting) of all returns of elections required by law to be sent to the secretary of state; insofar as such acts apply to members of the Legislature of the State of Alabama until such time as the Legislature of Alabama reapportions itself in accordance with the applicable provisions of Sections 50, 197, 198, 199, 200, 201 and 284 of the Constitution of Alabama of 1901.

(6) That the defendants, MacDonald Gallion and Bettye Frink, Attorney General and Secretary of State of the State of Alabama, respectively, and that the defendants, [fol. 60] J. Paul Meeks, John A. Sankey and Harrell Hammonds, Judges of Probate of Jefferson, Montgomery and Lowndes Counties, respectively, and their successors in office, and their agents, officers, assistants and employees be enjoined and restrained from: doing and performing any and all acts, things, and duties, including but not limited to, the preparation and distribution of ballots, receipt of returns and certificates of the total number of electors having voted, being amongst those present at the time of ascertainment of whether or not a majority of the qualified electors of the state voted "yes", and doing any other act or thing or performing any other duty in connection with elections which would enable the conduct of an election on a constitutional amendment which would, in any manner, change, alter, amend or delete those provisions of the Constitution of Alabama of 1901 which establish population as the proper basis for districting and apportioning the Legisiature of Alabama until such time as said Legislature has reapportioned itself in accordance with the presently applicable provisions of the Constitution of Alabama of 1901.

F. To direct the defendants to declare the next primary and general elections for members of the Alabama Legislature on an at-large basis, and to direct them to take whatever further action is necessary to insure that all candidates for election to the 1963 session of the Legislature of Alabama run at-large throughout the entire State on the following basis: the thirty-five (35) candidates for the State Senate receiving the highest number of votes shall be declared elected to the State Senate; and the one hundred and six (106) candidates for the House of Representatives receiving the highest number of votes shall be declared elected to the House of Representatives; and said method of election to continue until such time as the said Legislature enacts legislation reapportioning the State senatorial and representatives districts according to the Constitution of the State of Alabama.

[fol. 61] G. For such other and further relief as may seem just, equitable and proper.

This is the first application for any extraordinary process in this cause.

Respectively submitted,

Charles Morgan, Jr., 1512 Comer Building, Birmingham, Alabama;

George Peach Taylor, 621 Frank Nelson Building, Birmingham, Alabama;

Robert M. Loeb, Frank Nelson Building, Birmingham, Alabama;

Kenneth Howell, Brown-Marx Building, Birmingham, Alabama, By Charles Morgan, Jr., George Peach Taylor.

Duly sworn to by Charles Morgan, Jr. (jurat omitted in printing).

[fol. 62] Certificate of Service (omitted in printing).

[fol. 63]

EXHIBIT A TO AMENDED COMPLAINT

See Opposite ☞

SENATORIAL DISTRICTS
(one Senator per district)

Dist.	1900 Pop.	1960 Pop.	Counties
1	48,946	98,135	Lauderdale and Limestone
2	48,944	84,955	Lawrence and Morgan
3	50,522	85,879	Blount, Cullman and Winston
4	43,702	117,348	Madison
5	53,797	84,699	Jackson and Marshall
6	52,749	122,368	Etowah and St. Clair
7	34,874	95,878	Calhoun
8	35,773	65,495	Talladega
9	54,201	57,305	Chambers and Randolph
10	55,774	65,531	Elmore and Tallapoosa
11	36,147	109,047	Tuscaloosa
12	55,379	84,630	Fayette, Lamar and Walker
13	140,420	634,864	Jefferson
14	57,112	41,923	Pickens and Sumter
15	57,121	76,564	Autauga, Chilton and Shelby
16	35,651	15,417	Lowndes

Lawrence	20,124	24,501	1
Lee	31,826	49,754	2
Limestone	22,387	36,513	1
Lowndes	35,651	15,417	2
Macon	23,126	26,717	1
Madison	43,702	117,348	2
Marengo	38,315	27,098	2
Marion	14,494	21,837	1
Marshall	23,289	48,018	1
Mobile	62,740	314,301	3
Monroe	23,666	22,372	1
Montgomery	72,047	169,210	4
Morgan	28,820	60,454	2
Perry	31,783	17,358	2
Pickens	24,402	21,882	1
Pike	29,172	25,987	2
Randolph	21,647	19,477	1
Russell	27,083	46,351	2
St. Clair	19,425	25,388	1
Shelby	23,684	32,132	1
Sumter	32,710	20,041	2
Talladega	35,773	65,495	2
Tallapoosa	29,675	35,007	2
Tuscaloosa	36,147	109,047	2
Walker	25,162	54,211	2
Washington	11,134	15,372	1

[fol. 66]

6	52,745	122,366	Etowah and St. Clair
7	34,874	95,878	Calhoun
8	35,773	65,495	Talladega
9	54,201	57,305	Chambers and Randolph
10	55,774	65,531	Elmore and Tallapoosa
11	36,147	109,047	Tuscaloosa
12	55,379	84,630	Fayette, Lamar and Walker
13	140,420	634,864	Jefferson
14	57,112	41,923	Pickens and Sumter
15	57,121	76,564	Autauga, Chilton and Shelby
16	35,651	15,417	Lowndes
17	58,621	77,953	Butler, Conecuh and Covington
18	50,281	31,715	Bibb and Perry
19	57,060	59, 180	Choctaw, Clarke and Washington
20	38,315	27,098	Marengo
21	48,180	104,971	Baldwin, Escambia and Monroe
22	35,631	18,739	Wilcox
23	40,285	53,376	Dale and Geneva
24	35,152	24,700	Barbour
25	69,812	70,479	Coffee, Crenshaw and Pike
26	55,070	40,179	Bullock and Macon
27	58,909	96,105	Lee and Russell
28	72,047	169,210	Montgomery

Dist.	1900 Pop.	1960 Pop.	Counties
29	44,654	57,720	Cherokee and DeKalb
30	54,657	56,667	Dallas
31	52,346	90,331	Colbert, Franklin and Marion
32	55,193	33,137	Greene and Hale
33	62,740	314,301	Mobile
34	46,449	34,037	Clay, Cleburne and Coosa
35	36,147[1]	66,004	Henry and Houston
35	1,828,697[2]	3,266,740[3]	

[Fol. 66]

[1]Houston added to circuit on creation of county out of Dale, Geneva, and Henry in 1903.
[2]True senatorial district in 1901 - 52,248
[3]True senatorial district in 1961 - 93,335

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[Fol. 67]

[1]Houston created out of Dale, Geneva, and Henry Counties in 1903, and given one representative
[2]True representative district, 1901, 17,416
[3]True representative district, 1961, 30,818

67

County	1900 Pop.	1960 Pop.	Number of Representatives
Autauga	17,915	18,739	1
Baldwin	13,194	49,088	1
Barbour	35,152	24,700	2
Bibb	18,498	14,357	1
Blount	23,119	25,449	1
Bullock	31,984	13,462	2
Butler	25,761	24,560	2
Calhoun	34,874	95,878	2
Chambers	32,554	37,828	2
Cherokee	21,096	16,303	1
Chilton	16,522	25,693	1
Choctaw	18,136	17,870	1
Clarke	27,790	25,738	2
Clay	17,099	12,400	1
Cleburne	13,206	10,911	1
Coffee	20,972	30,583	1
Colbert	22,341	46,506	1
Conecuh	17,514	17,762	1
Coosa	16,144	10,726	1
Covington	15,346	35,631	1
Cranshaw	19,668	14,909	1

[illegible]	[illegible]	[illegible]	
Calhoun	34,874	95,878	2
Chambers	32,554	37,828	2
Cherokee	21,096	16,303	1
Chilton	16,522	25,693	1
Choctaw	18,136	17,870	1
Clarke	27,790	25,738	2
Clay	17,099	12,400	1
Cleburne	13,206	10,911	1
Coffee	20,972	30,583	1
Colbert	22,341	46,506	1
Conecuh	17,514	17,762	1
Coosa	16,144	10,726	1
Covington	15,346	35,631	1
Crenshaw	19,668	14,909	1
Cullman	17,849	45,572	1
Dale	21,189	31,066	1
Dallas	54,657	56,667	3
DeKalb	23,558	41,417	1
Elmore	26,099	30,524	2
Escambia	11,320	33,511	1
Etowah	27,361	96,980	2
Fayette	14,132	16,148	1
Franklin	16,511	21,988	1
Geneva	19,096	22,310	1
Greene	24,182	13,600	1

County	1900 Pop.	1960 Pop.	Number of Representatives
Hale	31,011	19,537	2
Henry	36,147	15,286	2
Houston	——[1]	50,713	1
Jackson	30,508	36,681	2
Jefferson	140,420	634,864	7
Lamar	16,084	14,271	1
Lauderdale	26,559	61,622	2
Lawrence	20,124	24,501	1
Lee	31,826	49,754	2
Limestone	22,387	36,513	1
Lowndes	35,651	15,417	2
Macon	23,126	26,717	1
Madison	43,702	117,348	2
Marengo	38,315	27,098	2
Marion	14,494	21,837	1
Marshall	23,289	48,018	1
Mobile	62,740	314,301	3
Monroe	23,666	22,372	1
Montgomery	72,047	169,210	4
Morgan	28,820	60,454	2
Perry	31,783	17,358	2
Pickens	24,402	21,882	1
Pike	29,172	25,987	2

County	1900 Pop.	1960 Pop.	Number of Representatives
Wilcox	35,691	18,739	2
Winston	9,554	14,858	1
Total	1,828,697[2]	3,266,740[3]	106

[fol. 68] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

[Title omitted]

ANSWER OF MACDONALD GALLION, ATTORNEY GENERAL OF ALABAMA—Filed September 1, 1961

For Answer to the Complaint as last amended, MacDonald Gallion, Attorney General of Alabama, says as follows:

1. The Court lacks jurisdiction of the subject matter.

2. The Complaint fails to state a claim upon which relief can be granted against this Defendant.

3. Indispensable party defendants are not before the Court.

4. This Defendant has no constitutional or statutory duties concerning reapportionment nor does he supervise or conduct elections.

5. That this, in substance, is a suit against the State contrary to the Eleventh Amendment to the United States Constitution and Section 14 of the Alabama Constitution of 1901.

Further answering, this Defendant says that although it is true that the Constitution of Alabama requires the Legislature to reapportion itself after each decennial census, and he agrees that this should be done, he specifically denies that he has any duties in connection therewith, [fol. 69] but on the contrary avers that this is a political matter committed exclusively to the Legislative branch of the State Government.

MacDonald Gallion, Attorney General of the State of Alabama, Willard W. Livingston, Chief Assistant Attorney General of the State of Alabama,

Leslie Hall, Assistant Attorney General of the State of Alabama, Gordon Madison, Assistant Attorney General of the State of Alabama.

Certificate of Service (omitted in printing).

[fol. 70] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

[Title omitted]

MOTION OF HARRELL HAMMONDS TO DISMISS—
Filed September 6, 1961

Comes the Defendant Harrell Hammonds, Judge of Probate of Lowndes County, Alabama, and moves the Court as follows:

1. To dismiss this action because the complaint, as amended, fails to state a claim against this Defendant upon which relief can be granted.

2. To dismiss this action because there is a misjoinder of parties defendant.

3. To dismiss this action because the members of the Legislature of Alabama, i.e., the House of Representatives and the State Senate, are proper and necessary parties to this action and they nor either of them have been joined as partles defendant herein.

[fol. 71] E. C. Boswell, Jack W. Smith, Attorneys for Defendant, Harrell Hammonds.

Boswell & Smith, Attorneys at Law, P. O. Box 278, Geneva, Alabama.

Certificate of Service (omitted in printing).

[fol. 72] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

[Title omitted]

ORDER DESIGNATING THREE-JUDGE COURT—
September 6, 1961

The Honorable Frank M. Johnson, Jr., United States District Judge for the Middle District of Alabama, to whom an applictaion for injunction and other relief has been presented in the above styled and numbered cause, having notified me that the action is one required by act of Congress to be heard and determined by a district court of three judges, I, Elbert P. Tuttle, Chief Judge of the Fifth Circuit, hereby designate the Honorable Richard T. Rives, United States Circuit Judge, and the Honorable Daniel H. Thomas, United States District Judge for the Southern District of Alabama, to serve with Judge Johnson as members of, and with him to constitute the said court to hear and determine the action.

Witness my hand this 6th day of September, 1961.

Elbert P. Tuttle, Chief Judge, Fifth Circuit.

[fol. 80] [File endorsement omitted]

THE MIDDLE DISTRICT OF ALABAMA

IN THE UNITED STATES DISTRICT COURT FOR

NORTHERN DIVISION

[Title omitted]

ANSWER OF BETTYE FRINK,
SECRETARY OF STATE OF THE STATE OF ALABAMA
—Filed September 25, 1961

For Answer to the Complaint, as last amended, Bettye Frink, Secretary of State, of the State of Alabama, says as follows:

1. The Court lacks jurisdiction of the subject matter.

2. The Complaint fails to state a claim upon which relief can be granted against this Defendant.

3. Indispensable party Defendants are not before the Court.

4. This Defendant has no constitutional or statutory duties concerning reapportionment of the Legislature of the State of Alabama.

5. That this, in substance, is a suit against the State contrary to the Eleventh Amendment to the United States Constitution and Section 14 of the Alabama Constitution of 1901.

6. That this Defendant admits that she is the duly elected, qualified and acting Secretary of State of the State of Alabama with her office in the City of Montgomery, Montgomery County, in said State; that the Secretary of State of the State of Alabama is a Constitutional Officer, a part of the Executive Branch of the State, and is the [fol. 81] person to whom all returns of elections for Members of the Legislature must be made; and that among her duties are those set forth in Paragraph IV on pages 3 and 4 of the Amended Bill of Complaint.

Further answering, this Defendant says that although the Constitution of Alabama requires the Legislature to reapportion itself after each decennial census, and although she agrees that this should be done, she specifically denies that she has any duties in connection therewith, but affirmatively alleges that the Amended Complaint shows on its face that this is a political matter committed exclusively to the Legislative Branch of the State Government.

Further answering, this Defendant says that this Court has no jurisdiction or authority to grant the relief prayed for in Paragraphs E (1) and (6) and F of the Amended Complaint inasmuch to do so would require this Defendant to act contrary to the Constitution and Statutes of the State of Alabama.

Bettye Frink, Secretary of State, State of Alabama, Defendant.

Certificate of Service (omitted in printing).

[fol. 82] (File endorsement omitted)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
(NORTHERN DIVISION)

[Title omitted]

MOTION OF R. E. FARR, ET AL., TO INTERVENE
—Filed November 1, 1961

The undersigned, described herein as intervenors, respectfully move the Court for permission to intervene in this action (as plaintiffs) individually and as representatives of the class hereinafter described, and as grounds therefor state:

I

R. E. Farr is a resident of Alabama and a citizen of Alabama and of the United States. He is Director of District 36 of the United Steelworkers of America, an unincorpo-

rated association. This organization is a labor union and a large number of its members are individuals who reside in and are citizens of the State of Alabama and are citizens of the United States.

Marshall Meadows is a resident of Jefferson County, Alabama, a citizen of Alabama and of the United States, and is President of Local Union 1013 affiliated with the United Steelworkers of America. Said Local Union includes in its membership a large number of individuals who are citizens of the State of Alabama and are citizens of the United States and who are residents of Jefferson County, Alabama.

Jack Hopping is a resident of Jefferson County, Alabama, a citizen of the State of Alabama and of the United States, and is President of Local Union 1489 affiliated with the United Steelworkers of America. Said Local Union includes in its membership a large number of individuals who are citizens of the State of Alabama and of the United States and who are residents of Jefferson County, Alabama.

Jack Ryan is a resident of Etowah County, Alabama, a citizen of the State of Alabama and of the United States, and is President of Local Union 2176 affiliated with the United Steelworkers of America. Said Local Union includes in its membership a large number of individuals who are citizens of the State of Alabama and of the United States and who are residents of Etowah County, Alabama.

Max W. Morgan is a resident of Mobile County, Alabama, a citizen of the State of Alabama and of the United States, and is President of Local Union 320 affiliated with the United Steelworkers of America. Said Local Union includes in its membership a large number of individuals who are citizens of the State of Alabama and of the United States and who are residents of Mobile County, Alabama.

[fol. 84]

II

The individuals who are citizens of the State of Alabama and of the United States, and in particular who are residents, taxpayers and duly qualified and registered voters of Jefferson, Etowah and Mobile Counties, respectfully, and who are also members of the above labor organizations, constitute a class so numerous as to make it impracticable

to bring them all before this Court as nominal intervenors. The above named intervenors, in their respective counties, adequately and fairly represent the interests of all of said individual citizens as a class, and the rights of such citizens and the relief sought herein for them are common and affected by common questions of law and fact. Each such named intervenor is a taxpayer and duly qualified and registered voter of his respective county.

The present legislative apportionment of the State of Alabama has deprived and continues to deprive the above named individual intervenors and the numerous individuals constituting the class represented by same, of rights guaranteed by the Constitution of the United States, and of rights guaranteed by the Constitution of Alabama, all as set forth in the amended complaint and exhibits filed herein.

Wherefore, these intervenors respectfully adopt the allegations of said amended complaint and exhibits as the pleading setting forth intervenors' claims to be adjudicated in this proceeding.

Respectfully,

Cooper, Mitch, Black & Crawford, By Jerome A. Cooper, As Attorneys for Intervenors.

1329 Brown Marx Bldg., Birmingham, Alabama.

[fol. 85] *Duly sworn to by R. E. Farr (jurat omitted in printing).*

Service and Certificate of Service (omitted in printing).

[fol. 89] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

[Title omitted]

ORDER GRANTING LEAVE TO INTERVENE BY R. E. FARR, ET AL.—November 16, 1961

This cause is now submitted upon the motion of R. E. Farr, Marshal Meadows, Jack Hopping, Jack Ryan and Max W. Morgan, made pursuant to Rule 24(b) and 24(c), Federal Rules of Civil Procedure, wherein said movants seek permission to intervene in this action as plaintiffs.

Upon consideration of said motion and pursuant to the authority of §2284, Title 28, United States Code, it is the Order, Judgment and Decree of the undersigned, as one of the judges designated for this Court, that the motion of the above-named movants, seeking leave to intervene in this cause as parties plaintiff, be and the same is hereby granted.

Done, this the 16th day of November, 1961.

Frank M. Johnson, Jr., United States District Judge.

[fol. 92] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
(NORTHERN DIVISION)

[Title omitted]

MOTION FOR A PRELIMINARY INJUNCTION—Filed March 29, 1962

Upon the verified complaint heretofore filed herein and the affidavits of Charles Morgan, Jr. and George Peach Taylor the Plaintiffs move the Court to issue a preliminary

injunction enjoining the defendants, their agents, servants, employees and attorneys and all persons in active concert and participation with them, pending the final hearing and determination of this action, from:

(1) Failing or refusing to cause the preparation of voting machines and paper ballots to be used in the Democratic primary elections of May 1st, May 15th, and May 29th, 1962 and in the general election of November, 1962, and in the primary and general elections of each year thereafter, in such a manner as would require the election of members of both the House of Representatives and Senate of the State of Alabama on an at-large basis, and to take whatever further action is necessary to insure that all candidates for party [fol. 93] nomination for election to the 1963 session of the Legislature of Alabama run at-large throughout the entire State of the following basis: the thirty-five (35) candidates for the State Senate receiving the highest number of votes shall be declared elected to the State Senate; and the one hundred and six (106) candidates for the House of Representatives receiving the highest number of votes shall be declared elected to the House of Representatives; and said method of election to continue until such time as the said Legislature enacts legislation reapportioning the State senatorial and representative districts according to the Constitution of the State of Alabama.

(2) Doing any act or thing or performing any official function whatsoever with respect to the Democratic primary election and run-off elections of May 1, May 15 and May 29, 1962, and any other Democratic primary election or special or general election in the year 1962 or thereafter in the event that each item set forth in the injunction issued by this Court be not done or complied with, such acts, things, and functions to include, but not be limited to, the certification of nominees or acceptance of such certification, the declaration of the winner of a primary or general election, the printing or furnishing of ballots and preparation and furnishing of voting machines, the furnishing or re-

ceiving of lists of qualified voters who have paid their poll tax, and any and all other official acts, things and functions dealing in and with said elections.

The grounds of this motion, as more fully set forth in the complaint, as amended and the annexed affidavits of Charles Morgan, Jr., and George Peach Taylor, are that:

(a) The legislature (House of Representatives and Senate) of the State of Alabama is severely mal-apportioned and as a result of such mal-apportionment the conducting of the 1962 Democratic primary elections and general election will result in a continuation of a system or scheme of representation in such legislature which deprives the plaintiffs of the equal protection of the law.

(b) The defendants, unless enjoined, threaten to conduct this election in the same manner as they and their predecessors in office have done for more than fifty years next preceding the filing of this motion.

(c) The conducting of the May 1st, May 15th, and May 29th, 1962 Democratic primary elections and the November, 1962 general election is causing and will cause immediate and irreparable injury to Plaintiffs and all others similarly situated.

(d) Unless the Defendants are restrained pending final [fol. 94] disposition of this action, the injury to plaintiffs will be irreparable even with final judgment for plaintiffs.

(e) No injury will be sustained by the defendants or by the public through the issuance of a preliminary injunction.

(f) The issuance of a preliminary injunction as prayed for herein will not cause undue inconvenience or loss to defendants, but will prevent irreparable injury to plaintiffs.

Plaintiffs further move this Court to convene for the purpose of hearing and determining the application for a preliminary injunction and this cause the statutory court of three judges, at least one of whom shall be a circuit judge, which such statutory court has been established in accordance with the provisions of Section 228, Title 28, United States Code.

Charles Morgan, Jr., 1012 Comer Building, Birmingham 3, Alabama, George Peach Taylor, 927 Brown Marx Building, Birmingham 3, Alabama, Attorneys for Plaintiffs.

Certificate of Service (omitted in printing).

[fol. 95]

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

(NORTHERN DIVISION)

AFFIDAVIT OF CHARLES MORGAN, JR. TO SUPPORT MOTION

State of Alabama)
Jefferson County)

Charles Morgan, Jr. being duly sworn on oath deposes and says as follows:

1. That he is a plaintiff in the above entitled action.

2. That this is an action to protect the voting rights of the plaintiffs and all others who are similarly situated and to protect their rights to equal protection of the laws by obtaining a declaration of the rights of the plaintiffs pursuant to 58 Stat. L. 890, 28 U.S.C. Sec. 2201, in the premises to-wit:

A. That the present legislative apportionment of the State of Alabama has deprived and continues to deprive the plaintiffs of liberty and property without due process of law and has denied and continued to deny the plaintiffs equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States of America.

[fol. 96] B. That the apportionment of the Legislature of the State of Alabama as established under and by virtue of Sections 1 and 2 of Title 32 of the Alabama Code of 1940, as amended, and Sections 202 and 203 of Article 9 of the Constitution of Alabama of 1901 are void and invalid as being contrary to the Fourteenth Amendment to the Constitution of the United States of America and the Constitution of Alabama of 1901 because of the failure of the Legis-

lature of Alabama to redistrict the counties forming senatorial districts and to reapportion the number of senators thereby and because of the failure of the legislature of Alabama to reapportion the house of representatives of the Legislature of Alabama in accordance with present population of Alabama as set forth in the Federal decennial census of 1960.

C. That the right of the plaintiffs to vote as guaranteed by laws and Constitution of Alabama of 1901 and the Constitution of the United States has been impaired.

D. That the Legislature of Alabama may not propose an amendment to the Constitution of Alabama of 1901 which would effect a change, alteration or amendment of those provisions of the Constitution of Alabama of 1901 which establish population as the proper basis for redistricting and reapportioning the Legislature until such time as the Legislature has redistricted and reapportioned itself in accordance therewith. And that this is also an action to procure an order of the court directing the defendants to declare the next primary and general election for nomination for or election to the Alabama Legislature on an at-large basis, and to direct them to take whatever further action is necessary to insure that all candidates for election to the 1963 session of the Legislature of Alabama run at-large throughout the entire State on the following basis: the thirty-five (35) candidates for the State Senate receiving the highest number of votes shall be declared elected to the State Senate; and the one hundred and six (106) candidates for the House of Representatives receiving the highest number of votes shall be declared elected to the House of Representatives; and said method of election to continue until such time as the said Legislature enacts legislation reapportioning the State senatorial and representatives districts according to the Constitution of the State of Alabama.

3. That Democratic party primary election in the State of Alabama and general elections in such state since the year 1901 have been held under the terms and provisions of and in accordance with Sections 1 and 2 of Title 32 Alabama Code of 1940, as amended which such sections ac-

cord with Sections 202 and 203 of Article 9 of the Constitution of Alabama of 1901.

[fol. 97] 4. That the conduct of elections in such manner maintains a system of mal-apportionment of members of the Alabama House of Representatives and the Alabama Senate which results in total rural domination of the Alabama Legislature.

5. That the votes of plaintiffs and all others similarly situated have been so diluted in their effectiveness due to such system of mal-apportionment as to result in a disparity between the vote of the plaintiffs and all others similarly situated which such disparity results in the vote of a resident of Lowndes County for representative being worth approximately 15 times that of plaintiffs; in the Senate, approximately 42 times.

6. That Democratic Party primary elections in Alabama are financed by the State of Alabama or by the treasuries of the counties thereof and that general elections in such state are financed by such state and that to the knowledge of plaintiffs only one seat in the Alabama House of Representatives has been held by a member of a political party other than the Democratic Party in the last 60 years.

7. That the results of the Democratic Party primary elections in the State of Alabama are and have been for many years for all practical purposes the results of the actual election of the State of Alabama and in the judgment of plaintiffs such Democratic primary election is in net effect actually the general election of the State of Alabama.

8. That unless the defendants are restrained and enjoined from conducting the coming May 1st, May 15th, and May 29th, 1962, democratic primary elections and unless they are further enjoined from holding the November, 1962 general election, plaintiffs will be irreparably injured in that they will not have been able to vote upon the proper number of legislators to which they and all others similarly situated are entitled to vote either on a basis of the proper number of legislators to which they are entitled under the Constitution of Alabama of 1901 or,

in the alternative, to vote upon all candidates for membership in the legislature of Alabama in an election held at an at-large basis.

9. That defendants have taken preliminary steps toward preparation of ballots and voting machines for the conduct of the coming May 1st, May 15th and May 29th, 1962, democratic primary elections, and unless they are restrained and enjoined from holding such primary elections, the election of candidates of such primary election will result in a continuation of the mal-apportionment of the old Legislature as set out herein and in the amended com-
[fol. 98] plaint filed in this cause.

Charles Morgan, Jr.

Sworn to and subscribed before me this the 29th day of March, 1962.

Timothy J. Norris, Notary Public.

[fol. 99]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
(NORTHERN DIVISION)

AFFIDAVIT OF GEORGE PEACH TAYLOR TO SUPPORT MOTION

State of Alabama)
Jefferson County)

GEORGE PEACH TAYLOR being duly sworn on oath deposes and says as follows:

1. That he is a plaintiff in the above entitled action.

2. That this is an action to protect the voting rights of the plaintiffs and all others who are similarly situated and to protect their rights to equal protection of the laws by obtaining a declaration of the rights of the plaintiffs pursuant to 58 Stat. L. 890, 28 U.S.C. Sec. 2201, in the premises to-wit:

A. That the present legislative apportionment of the State of Alabama has deprived and continues to deprive the

plaintiffs of liberty and property without due process of law and has denied and continues to deny the plaintiffs equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States of America.

[fol. 100] B. That the apportionment of the Legislature of the State of Alabama as established under and by virtue of Sections 1 and 2 of Title 32 of the Alabama Code of 1940, as amended, and Sections 202 and 203 of Article 9 of the Constitution of Alabama of 1901 are void and invalid as being contrary to the Fourteenth Amendment to the Constitution of the United States of America and the Constitution of Alabama of 1901 because of the failure of the Legislature of Alabama to redistrict the counties forming senatorial districts and to reapportion the number of senators thereby and because of the failure of the legislature of Alabama to reapportion the house of representatives of the Legislature of Alabama in accordance with present population of Alabama as set forth in the Federal decennial census of 1960.

C. That the right of the plaintiffs to vote as guaranteed by laws and Constitution of Alabama of 1901 and the Constitution of the United States has been impaired.

D. That the Legislature of Alabama may not propose an amendment to the Constitution of Alabama of 1901 which would effect a change, alteration or amendment of those provisions of the Constitution of Alabama of 1901 which establish population as the proper basis for redistricting and reapportioning the Legislature until such time as the Legislature has redistricted and reapportioned itself in accordance therewith. And that this is also an action to procure an order of the court directing the defendants to declare the next primary and general election for nomination for or election to the Alabama Legislature on an at-large basis, and to direct them to take whatever further action is necessary to insure that all candidates for election to the 1963 session of the Legislature of Alabama run at-large throughout the entire State on the following basis: the thirty-five (35) candidates for the

State Senate receiving the highest number of votes shall be declared elected to the State Senate; and the one hundred and six (106) candidates for the House of Representatives receiving the highest number of votes shall be declared elected to the House of Representatives; and said method of election to continue until such time as the said Legislature enacts legislation reapportioning the State senatorial and representatives districts according to the Constitution of the State of Alabama.

3. That Democratic party primary election in the State of Alabama and general elections in such state since the year 1901 have been held under the terms and provisions of and in accordance with Sections 1 and 2 of Title 32 Alabama Code of 1940, as amended which such sections accord with Sections 202 and 203 of Article 9 of the Constitution of Alabama of 1901.

[fol. 100a] 4. That the conduct of elections in such manner maintains a system of mal-apportionment of members of the Alabama House of Representatives and the Alabama Senate which results in total rural domination of the Alabama Legislature.

5. That the votes of plaintiffs and all others similarly situated have been so diluted in their effectiveness due to such system of mal-apportionment as to result in a disparity between the vote of the plaintiffs and all others similarly situated which such disparity results in the vote of a resident of Lowndes County for representative being worth approximately 15 times that of plaintiffs; in the Senate, approximately 42 times.

6. That Democratic Party primary elections in Alabama are financed by the State of Alabama or by the treasuries of the counties thereof and that general elections in such state are financed by such state and that to the knowledge of plaintiffs only one seat in the Alabama House of Representatives has been held by a member of a political party other than the Democratic Party in the last 60 years.

7. That the results of the Democratic Party primary elections in the State of Alabama are and have been for

many years for all practical purposes the results of the actual election of the State of Alabama and in the judgment of plaintiffs such Democratic primary election is in net effect actually the general election of the State of Alabama.

8. That unless the defendants are restrained and enjoined from conducting the coming May 1st, May 15th, and May 29th, 1962, democratic primary elections and unless they are further enjoined from holding the November, 1962 general election, plaintiffs will be irreparably injured in that they will not have been able to vote upon the proper number of legislators to which they and all others similarly situated are entitled to vote either on a basis of the proper number of legislators to which they are entitled under the Constitution of Alabama of 1901 or, in the alternative, to vote upon all candidates for membership in the legislature of Alabama in an election held at an at-large basis.

9. That defendants have taken preliminary steps toward preparation of ballots and voting machines for the conduct of the coming May 1st, May 15th and May 29th, 1962, democratic primary elections, and unless they are restrained and enjoined from holding such primary elections, the election of candidates of such primary election will result in a continuation of the mal-apportionment of the old Legislature as set out herein and in the amended com- [fol. 101] plaint filed in this cause.

George Peach Taylor

Sworn to and subscribed before me this the 29th day of March, 1962.

Timothy J. Norris, Notary Public.

[fol. 102] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
(NORTHERN DIVISION)

[Title omitted]

ORDER SETTING HEARING OF APPLICATION FOR INTERLOCUTORY INJUNCTION—March 30, 1962

On March 29, 1962 the plaintiffs filed their application for an interlocutory injunction. Subdivision (4) of Section 2284, Title 28 United States Code, provides that such an application "shall be given precedence and assigned for hearing at the earliest practicable day." This Court therefore has no discretion but is under a mandatory duty to set the application for interlocutory injunction for a hearing.

The application for interlocutory injunction is assigned for a hearing in the United States District Courtroom at Montgomery, Alabama, at 10:00 o'clock a.m. on the 14th day of April, 1962.

[fol. 103] Pursuant to subdivision (2) of the same Section 2284, it is directed that a copy of this order be served on the Governor of Alabama and on the Attorney General of Alabama.

Any evidence to be introduced at said hearing should be in the form of affidavits unless otherwise ordered or permitted.

While thus complying with their duty to set the application for interlocutory injunction for a hearing, the members of this Court, in view of the public importance of the case, as well as for the guidance of counsel, express their tentative but unanimous opinion that no injunction is required prior to the primary elections which are set for May 1 and May 29, 1962, in order for citizens of the State represented by the plaintiffs in this case to be accorded any constitutional rights asserted in time for the exercise of such rights at the general election in November 1962. In

the meanwhile, there is time for the Legislature of Alabama to comply with its duty prescribed by Sections 199 and 200 of the Constitution of 1901 of the State of Alabama.

> "Sec. 199. It shall be the duty of the legislature at its first session after the taking of the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the number of representatives and apportion them among the several counties of the state, according to the number of inhabitants in them, respectively; provided, that each county shall be entitled to at least one representative.
>
> "Sec. 200. It shall be the duty of the legislature at its first session after taking of the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the number of senators, and to divide the state into as many senatorial districts as there are senators, which districts shall be as nearly equal to each other in the number of inhabitants as may be, and each shall be entitled to one senator, and no more; and such districts, when formed, shall not be changed until the next apportioning session of the legislature, after the next decennial census of the United States shall have been taken; provided, that counties created after the next preceding apportioning session of the legislature may be attached to senatorial districts. No county shall be divided between two districts, and no district shall be made up of two or more counties not contiguous to each other."

[fol. 104] The members of this Court are of the tentative but unanimous opinion that no action on the part of this Court, which is not absolutely essential for the protection of any constitutional rights asserted in the complaint, should be taken before the Legislature of Alabama has had a further reasonable but prompt opportunity to comply with its duty under the Constitution of the State of Ala-

bama. Such action may make the issuance of any injunction by this Court unnecessary.

Done this the 30th day of March 1962.

Richard T. Rives, United States Circuit Judge;
Daniel H. Thomas, United States District Judge;
Frank M. Johnson, Jr., United States District Judge.

[fol. 105] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
(NORTHERN DIVISION)

[Title omitted]

MOTION OF DAVID J. VANN, ET AL. FOR LEAVE TO INTERVENE—Filed April 9, 1962

David J. Vann, Robert S. Vance and Richard P. Humphrey, Jr., described herein as interveners, respectfully move the Court for permission to intervene as plaintiffs in this action, individually and as representatives of the class hereinafter described, and as grounds therefore, state:

I

Each of the interveners is a citizen of the United States and is a resident citizen of, and registered voter and taxpayer in, Jefferson County, Alabama. Each is a member, and is Chairman, Vice-Chairman and Secretary respectively, of the Jefferson County Democratic Campaign Committee, a voluntary association of members of the Democratic Party of Alabama which encourages the active participation of Jefferson County citizens in the public affairs of their county and state. As such, said interveners and the Committee which they represent has a great interest in the failure of the citizens of Jefferson County to be fairly represented in the Legislature of Alabama.

II

As residents, citizens, taxpayers and duly qualified voters in Jefferson County, the interveners are members of the class described in the complaint which is so numerous as to make it impractical to bring all members before this [fol. 106] Court as nominal interveners. Each intervener will be affected by the Court's order in this proceeding and, as more fully will appear hereinafter, desires to present to the Court an alternative remedy for consideration by the Court.

III

The present Legislature of Alabama, as demonstrated by the Amended Complaint, is arbitrarily and unfairly apportioned among the counties so as to deprive the people residing in such counties, including the interveners who reside in the County of Jefferson, of their right to be fairly represented in said Legislature under an apportionment based on population as guaranteed by the Constitution of Alabama and so as to deprive such persons of rights guaranteed and protected by the Constitution of the United States as set forth in the Amended Complaint and in the Exhibits filed therewith.

IV

Interveners, assume that, unless the Legislature of Alabama is reapportioned by legislative action prior to the time when such remedy becomes necessary, this Court will devise a proper remedy to protect the right of all citizens of Alabama to constitutional representation in the State Legislature prior to the election of members to another Alabama Legislature. On this basis, the interveners therefore suggest that the Court should stay its hand until a date to be set by the Court in July, 1962, to give the Legislature of Alabama a full opportunity to abide by the Constitutions of Alabama and of the United States which the members of such Legislature have solemnly sworn to uphold.

[fol. 107] Wherefore, the Interveners hereby adopt the allegations of the Amended Complaint except those allegations of the second paragraph of part XV, and join

in the prayers thereof except insofar as such prayers would enjoin the primaries of the Democratic Party of Alabama now scheduled during the month of May, 1962. Interveners further pray under the prayer for general relief, and as an alternative to that set out in Prayer F of the Complaint, for further, but alternative specific relief, as follows:

Should the Legislature of Alabama fail to provide for reapportionment of said Legislature in accordance with the provisions of the Constitution of Alabama in time for the qualification of the candidates for election to membership in such Legislature in the general election to be held in November, 1962, that the Court enter an order prescribing a provisional plan of reapportionment within the standards specified in the Constitution of Alabama and directing that no person shall be qualified or certified, or have his name placed on a ballot, as a candidate for election as a member of the Legislature of Alabama in any primary or general election to be held in the State of Alabama after the effective date of such order, and that no person shall be certified as elected to membership in such Legislature unless elected in accordance with such provisional plan of reapportionment, unless and ~~until a permanent~~ plan of reapportionment shall have been adopted by a Legislature, all of the members of which have been elected under the provisions of such provisional plan of reapportionment, or by a constitutional convention called by such a provisionally reapportioned Legislature, or by a constitutional amendment proposed by such a provisionally reapportioned Legislature and adopted by the people of Alabama in accordance with the Constitution of Alabama.

[fol. 108] The Interveners respectfully pray that the Court will enter an order allowing their invention as aforesaid under the provisions of Rule 24 of the Federal Rules of Civil Procedure and 28 U.S.C. §2284.

David J. Vann, Robert S. Vance, C. H. Erskine Smith, Attorneys for the Interveners, 2100 Comer Building, Birmingham, Alabama.

[fol. 109] *Duly sworn to by David J. Vann (jurat omitted in printing).*

Service and Certificate of Service (omitted in printing).

[fol. 132] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
(NORTHERN DIVISION)
Civil Action No. 1744-N

M. O. SIMS, et al., Plaintiffs,

vs.

BETTYE FRINK, Secretary of State of the State of Alabama, et al., Defendants.

OPINION ON HEARING OF APPLICATION FOR INTERLOCUTORY INJUNCTION—April 14, 1962

Before Rives, Circuit Judge, and Thomas and Johnson, District Judges.

Per Curiam:

In the order setting for a hearing plaintiffs' application for interlocutory injunction, we expressed the view that Section 2284 of Title 28 United States Code placed upon this Court the mandatory duty to set the application for a hearing "at the earliest practicable day." The same principle, together with the importance of the case and the necessity for some effective action within a limited time, requires an early announcement of our views.

We remain of the same opinion that was expressed in the order setting the application for hearing, viz: until the Legislature has had a further reasonable but prompt opportunity to comply with its duty under Sections 199 and 200 of the Constitution of Alabama, this Court should take no action not absolutely essential for the protection of the constitutional rights asserted in the complaint; and no ruling before the primary elections of May 1962 appears essential.

The application for interlocutory injunction pertains to the conduct of both the primary elections of May 1962

and the general election of November 1962. That applica-
[fol. 133] tion is therefore continued and re-set for hearing at 10 o'clock a.m. on Monday, July 16, 1962. The hearing cannot be set for a much later date because, if this Court is to act effectively, some action must be taken in ample time before the general election of November 1962.

For the guidance of counsel and for such aid as we may be in solving the troublesome but important subject of this litigation, we make the following additional remarks:

(1) Under the opinion of the Supreme Court of the United States in *Baker* v. *Carr*, No. 6, October Term, 1961, decided March 26, 1962, it seems clear to us that: (a) this Court has jurisdiction of the present action, (b) the complaint as amended states a justiciable cause of action; (c) the plaintiffs have standing to challenge the Alabama apportionment statutes.

(2) We have no disposition to discourage the introduction of evidence by any party, and in the ordinary case our opinion as to whether the plaintiffs will be entitled to appropriate relief should await the introduction of evidence. However, we take judicial notice of the same facts which are well known to the Justices of the Supreme Court of Alabama and to the people of this State, as expressed on two different occasions in opinions of the Justices.

> "We judicially know that the population of the various counties of this state has changed during the years which have intervened since the Constitution of 1901 was adopted, so that the representation as provided in §§1 and 2 of Title 32, Code 1940, cannot be said to be on a population basis."

Opinion of the Justices of the Supreme Court of Alabama, No. 117, August 14, 1950, 47 So.2d 714, 717.

> "We know, and the people of this State know, that our Constitution says that it *shall* be the duty of the legislature to reapportion the legislature according to population after each decennial census and that this constitutional mandate of the Constitution of 1901 has never been complied with."

[fol. 134] Opinion of the Justices of the Supreme Court of Alabama, No. 148, July 11, 1955, 81 So.2d 881, 887.

(3) The controlling constitutional formula which runs throughout the Constitution of Alabama is thus expressed in the last sentence of Section 284 of said Constitution: "Representation in the legislature shall be based upon population, and such basis of representation shall not be changed by constitutional amendments." See also Sections 198 to 201, inclusive. If that formula is met, then there can be no valid objection under the equal protection clause or any other part of the Constitution of the United States, which is, of course, the supreme law of the Land, binding alike on this Court and on the Legislature of Alabama (Article VI, Clauses 2 and 3 of the Constitution of the United States). It is necessary that any action taken by the Legislature comply with constitutional standards, and it is important that such standards be met not halfheartedly but fully, because once there has been a legislative reapportionment, unless it so completely fails to meet constitutional standards that it must be set aside by court order, it will not be subject to alteration until the next session of the Legislature after the decennial census in 1970 (Constitution of Alabama, Section 198).

(4) In the event that the Legislature of Alabama complies with its duty before the next hearing, and this Court can so find, then no further action will be needed in this case and the cases can be dismissed. If the Legislature does not act, or if its action does not meet constitutional standards, then we will be under a clear duty to take some action in time to take effect before the general election of November 1962. Such action, however, should be held to the minimum that is necessary for the citizens of Alabama to be accorded their constitutional rights.

[fol. 135] (5) To that end, it is fair to advise the parties of our present thinking that we would then follow the plan suggested in the concurring opinion of Mr. Justice Clark in *Baker* v. *Carr, supra*:

"One plan might be to start with the existing assembly districts, consolidate some of them, and award the seats thus released to those counties suffering the most egregious discrimination. Other possibilities are present and might be more effective. But the plan here suggested would at least release the stranglehold now on the Assembly and permit it to redistrict itself."

(6) While retaining jurisdiction, we could then defer further decision or action to afford the newly elected Legislature full opportunity to heed the constitutional mandate to reapportion. When that has been done the duty resting on us will be at an end and the case can be dismissed.

This the 14th day of April, 1962.

Richard T. Rives, United States Circuit Judge,
Daniel H. Thomas, United States District Judge,
Frank M. Johnson, Jr., United States District Judge.

[fol. 136] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

[Title omitted]

ORDER GRANTING LEAVE TO INTERVENE BY DAVID J. VANN, ET AL.—April 20, 1962

This cause is now submitted upon the motion of David J. Vann, Robert S. Vance and Richard P. Humphrey, Jr., filed herein on April 9, 1962, pursuant to Rules 24(b) and 24(c), Federal Rules of Civil Procedure, wherein said movants seek permission of this Court to intervene in this action as plaintiffs.

Upon consideration of said motion and pursuant to the authority of §2284, Title 28, United States Code, it is the Order, Judgment and Decree of the undersigned, as one

of the judges designated for this court, that the motion of the above-named movants, seeking leave to intervene in this cause as parties plaintiff, be and the same is hereby granted.

Done, this the 20th day of April, 1962.

Frank M. Johnson, Jr., United States District Judge.

[fol. 137] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

[Title omitted]

ORDER DENYING MOTIONS TO DISMISS—April 20, 1962

This cause is now submitted on the following motions filed herein by the defendants as hereinafter indicated, wherein said defendants seek to have this Court dismiss this action as to each of them so moving:

(1) The motion to dismiss filed on September 12, 1961 and refiled on February 27, 1962, by Sam Engelhardt, Chairman of the Alabama State Democratic Executive Committee, and H. G. Rains, Secretary of the Alabama State Democratic Executive Committee.

(2) The first, second, third, fourth, and fifth numbered paragraphs in the answer of Bettye Frink, Secretary of State of the State of Alabama, each being considered and treated as a motion to dismiss and the same being filed herein on September 25, 1961.

[fol. 138] (3) The motion to dismiss filed herein on September 6, 1961, by Harrell Hammonds, Judge of Probate of Lowndes County, Alabama.

(4) The first, second, third, fourth, and fifth defenses in the answer of MacDonald Gallion, in his capacity as Attor-

ney General of the State of Alabama, each being considered and treated as a motion to dismiss and being filed herein on September 1, 1961.

Upon consideration of each of the above-enumerated motions and pursuant to the authority of §2284, Title 28, United States Code, it is the Order, Judgment and Decree of the undersigned, as one of the judges designated for this court, that each of said motions be and each is hereby denied.

Done, this the 20th day of April, 1962.

Frank M. Johnson, Jr., United States District Judge.

[fol. 139] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

[Title omitted]

MOTION OF JOHN W. McCONNELL, ET AL. FOR LEAVE TO INTERVENE—Filed June 27, 1962

John W. McConnell, Jr., Joseph N. Langan, William M. Williams, Jr. and Garet Van Antwerp, described herein as Intervenors, respectfully move the Court for permission to intervene as Plaintiffs in this action, individually and as representatives of the class hereinafter described, and as grounds therefor, state:

I.

Each of the Intervenors is a citizen of the United States, a resident citizen of and registered voter and taxpayer in Mobile County, Alabama, and a member of the Citizens Committee for Representative Government on a Fair Basis, an unincorporated association. As such, said Intervenors have a great interest in the failure of the citizens of Mobile County to be fairly represented in the Legislature of Ala-

bama. As residents, citizens, taxpayers and duly qualified voters in Mobile County and as members of said association, the Intervenors are members of a class, which is so numerous as to make it impractical to bring all members before this Court as nominal Intervenors. Each Intervenor will be affected by the Court's Order in this proceeding and, as more fully will appear hereinafter, desires to present to the Court an alternative remedy for consideration by the Court.

[fol. 140]

II.

The present Legislature of Alabama, as demonstrated by the Amended Complaint, is arbitrarily and unfairly apportioned among the counties of this State, so as to deprive the people residing in such counties, including the Intervenors who reside in the County of Mobile, of their right to be fairly represented in said Legislature, under an apportionment based on population, as guaranteed by the Constitution of Alabama, and so as to deprive such persons of rights guaranteed and protected by the Constitution of Alabama, specifically, Sections 6, 35 and 36 of said Constitution, and by the Constitution of the United States, as set forth in the Amended Complaint and in the Exhibits filed therewith, which arbitrary and unfair apportionment of representation constitutes an usurpation and oppression of the citizens of this State, including the Intervenors, in the enjoyment of life, liberty and property.

III.

That to further illustrate inequalities of the present unconstitutional apportionment of the Legislature of the State of Alabama, as set out in the Amended Complaint, the County of Mobile has a population of approximately 314,000, according to the 1960 Federal Census, and has three (3) members of the House of Representative and one (1) member of the Senate of the State of Alabama. Each Representative of Mobile County, therefore, represents approximately 104,000 people; while the Senator from Mobile County represents approximately 314,000 people.

IV.

Wherefore, the Intervenors hereby adopt the allegations of the Amended Complaint and of the Motion for Leave to Intervene, filed herein by David J. Vann, Robert S. Vance and Richard P. Humphrey, Jr., and join in the prayers [fol. 141] thereof, including the alternative to Prayer F of the Complaint as filed in the Motion for Leave to Intervene.

The Intervenors respectfully pray that the Court will enter an Order allowing their intervention, as aforesaid, under the provisions of Rule 24 of the Federal Rules of Civil Procedure, and 28 U.S.C., Section 2284.

John W. McConnell, Jr., Attorney for the Intervenors.

1101 Merchants National Bank Building, Mobile, Alabama.

Certificate of Service (omitted in printing).

[fol. 142] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
(NORTHERN DIVISION)

[Title omitted]

MOTION TO AMEND COMPLAINT—Filed June 28, 1962

Plaintiffs move the Court for leave to amend their complaint on file herein by adding thereto in the prayer for relief heretofore designated as Paragraph XIV, the following:

H. That this Court enter an order provisionally reapportioning the House of Representatives of Alabama and provisionally redistricting the Senate of Alabama and in such order start with the existing apportionment of members of the House of Representatives and existing senatorial districts, alter or consolidate some of

[fol. 143] them, and award the seats thus released to those counties suffering the most egregious discrimination to the end that the strangle-hold now on the Legislature be released in order to permit the said Legislature to reapportion and redistrict itself at a later date, while retaining jurisdiction of this cause, then defer further decision or action in order to afford the newly elected Legislature of 1963 full opportunity to heed the constitutional mandate to reapportion and redistrict and, in order to enforce its decree and after such alteration and consolidation that this Court issue an injunction enjoining and restraining the defendants from doing any act or thing with respect to the conduct of an election of members of the Legislature of Alabama in the November, 1962, general election except in accordance with the system of provisional reapportionment and redistricting by alteration and consolidation adopted by this Court.

The grounds of this motion are that the Legislature of Alabama is presently assembled in special session but appears to be giving no serious consideration to any act reapportioning the House of Representatives and redistricting the Senate of the Legislature of Alabama on a population basis prior to the November, 1962, general election in accordance with the Opinion On Hearing On Application For Interlocutory Injunction previously issued herein and more particularly, the remarks for guidance of counsel contained therein.

Charles Morgan, Jr., 1512 Comer Building, Birmingham 3, Alabama;

George Peach Taylor, 927 Brown-Marx Building, Birmingham 3, Alabama, Attorneys for Plaintiffs.

[fol. 144] Certificate of Service (omitted in printing).

[fol. 145] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

NORTHERN DIVISION

[Title omitted]

MOTION FOR LEAVE TO AMEND COMPLAINT IN INTERVENTION—Filed June 28, 1962

The following officers of the Jefferson County Democratic Campaign Committee, David J. Vann, Robert S. Vance, and Richard P. Humphrey, Jr., have heretofore, by order of this Court, been granted leave to intervene as parties plaintiff in this action. These intervening plaintiffs hereby respectfully move the Court for an order granting leave to these interveners to amend the prayer of their complaint in intervention so as to be more specific in the relief requested thereby. These intervening plaintiffs further move the Court for an order declaring that their complaint in intervention shall be treated as so amended without the necessity of further pleading:

1. The intervening plaintiffs pray that the Court will, following the hearing set on July 16, 1962, grant a preliminary injunction against the defendants requiring that the members of the House of Representatives of the State of Alabama to be elected in the November General elections shall be chosen according to the plan set out as Exhibit "A" to this motion; which plan results in the transfer of only 19 seats in such House of Representatives from counties which are now overrepresented to counties which are now egregiously underrepresented, leaves 87 seats in the House of Representatives wholly unaffected and changes in no way the representation afforded to 42 of the 67 counties [fol. 146] of Alabama; and which plan follows the Method of Equal Proportions under which 67 of the seats in said House of Representatives are assigned one to each county on a purely geographical basis, without regard to population at all, and under which the 39 remaining seats are assigned on a basis which reduces to a minimum the discrepancies between the ratios of representation among those counties which, by reason of their population, are each entitled to share in the assignment of these additional

members in addition to their one geographically assigned member.

2. The intervening plaintiffs pray that said preliminary injunction also require that the members of the Senate of the State of Alabama to be elected in the November General Election shall be elected according to the plan set out in Exhibit "B" to this motion, which plan leaves unaffected 17 of the present seats in the Senate of Alabama, merges 18 of the present districts to form 9 provisional, or temporary, multi-county districts, and assigns the 9 additional seats to provisional districts which are coextensive with the entire boundaries of those counties now most egregiously underrepresented.

3. The intervening plaintiffs further pray that, after entering such preliminary injunction, the Court will retain jurisdiction for the purpose of modifying such preliminary injunction and for the purpose of further hearing for the granting of permanent relief should both the present Legislature, and the provisionally, or temporarily, reapportioned Legislature to be elected, fail or refuse to permanently reapportion the Legislature of Alabama in accordance with the requirements of the applicable provisions of the Constitution of Alabama as interpreted to comply with the provisions of the Fourteenth Amendment to the Constitution [fol. 147] of the United States.

4. Intervening plaintiffs also pray for such other further and different relief as to which they may, in good conscience, be entitled.

In support of the aforesaid amended prayers the intervener plaintiffs aver:

(1) The plans proposed result in the minimum changes which are necessary to correct egregious malapportionment.

(2) The effecting of these plans by order of this Court will result in no irreparable injury to any citizen of Alabama, but will assure such citizens a fairly apportioned Legislature for the first time in over fifty years.

David J. Vann, Robert S. Vance, C. H. Erskine Smith, Attorneys for Intervening Plaintiffs.

Certificate of Service (omitted in printing).

TEMPORARY OR PROVISIONAL REAPPORTIONMENT OF THE HOUSE OF REPRESENTATIVES

Each of the counties of Alabama shall have the number of representatives respectively indicated below:

Seventeen Members - Jefferson (+) (37,345) *
Eight Members - Mobile (+) (39,287)
Four Members - Montgomery (=) (42,302)
Three Members each - Calhoun (+) (31,959), Etowah (+) (32,327), Madison (+) (39,116), Tuscaloosa (+) (36,347).
Two Members each - - Dallas (-) (28,333), Lauderdale (=) (30,811), Morgan (=) (30,227), Talladega (=) (32,747), Walker (=) (27,205).
One Member each - Autauga (=) (18,739), Baldwin (=) (49,088), Barbour (-) (24,700), Bibb (=) 14,357, Blount (=) (25,449), Bullock (-) (13,462), Butler (-) (24,560), Chambers (-) (37,828), Cherokee (=) (16,303), Chilton (=) (25,693), Choctaw (=) (17,870), Clarke (-) (25,738), Clay (=) (12,400), Cleburne (=) (10,911), Coffee (=) (30,583), Colbert (=) (46,506), Conecuh (=) (17,762), Coosa (=) (10,726), Covington (=)(35,631), Crenshaw (=) (14,909), Cullman (=) (45,572), Dale (=) (31,066), DeKalb (=) (41,417), Elmore (-) (30,524), Escambia (=) (33,511), Fayette (=) (16,148), Franklin (=) (21,988), Geneva (=) (22,310), Greene (=) (13,600), Hale (-) (19,537), Henry (-) (15,286), Houston (=) (50,718), Jackson (-) (36,681), Lamar (=) (14,271), Lawrence (=) (24,501), Lee (-) (49,754), Limestone (=) (36,513), Lowndes (-) (15,417), Macon (=) (26,717), Marengo (-) (27,098), Marion (=) (21,837), Marshall (=) (48,018), Monroe (=) (22,372), Perry (-) (17,358), Pickens (=) (21,882), Pike (-) (25,987), Randolph (=) (19,477), Russell (-) (46,351), St. Clair (=) (25,388), Shelby (=) (32,132), Sumter (-) (20,041), Tallapoosa (-) (35,007), Washington (=) (15,372), Wilcox (-) (18,739), Winston (=) (14,858).

(=) - Present representation unaffected - 42 counties.
(+) - Representation increased - 6 counties.
(-) - Representation decreased - 19 counties.

* Figures in parentheses indicate the number of citizens each representative will speak for under this proposal as shown by 1960 census.

[fol. 148]

EXHIBIT

[fol. 149]

EXHIBIT "B" TO MOTION

See Opposite ☞

TEMPORARY OR PROVISIONAL REAPPORTIONMENT OF THE SENATE

(Retains 17 Districts; merges 18 Districts to form 9 provisional Districts; assigns new 9 seats to counties now most egregiously affected.)

Variations shown are varitions from "perfect district" of 93,335.

DISTRICT	POPULATION	VARIATION
FIRST: * Lauderdale Limestone	98,135	+ 4,800
SECOND: * Lawrence Morgan	84,955	- 8,380
THIRD: * Blount,Cullman Winston	85,879	- 7,456
FOURTH: * Madison	117,348	+24,013
FIFTH: * Jackson Marshall	84,699	- 8,636
SIXTH: * Etowah St. Clair	122,368	+29,033
SEVENTH: * Calhoun	95,878	+ 2,543
EIGHTH: Talladega Clay, Coosa	88,621	- 4,714
NINTH: DeKalb,Cherokee Cleburne Randolph	88,108	- 5,227
TENTH: Chambers,Elmore Tallapoosa	103,359	+10,024
ELEVENTH: * Tuscaloosa	109,047	+15,712
TWELFTH: * Fayette,Lamar Walker	84,630	- 8,705
THIRTEENTH: * Jefferson #1	90,695	- 2,640
FOURTEENTH:		
TWENTY-FIRST: * Baldwin,Monroe Escambia	104,971	+11,636
TWENTY-SECOND: Jefferson #2	90,695	- 2,640
TWENTY-THIRD: Perry,Bibb, Dallas	88,382	- 4,953
TWENTY-FOURTH: Pickens, Hale, Greene,Sumter, Choctaw	92,930	- 405
TWENTY-FIFTH: Marengo, Washington, Clarke,Wilcox	86,947	- 6,388
TWENTY-SIXTH: Lowndes Crenshaw Coffee Pike	86,896	- 6,439
TWENTY-SEVENTH: * Lee Russell	96,105	+ 2,770
TWENTY-EIGHTH: * Montgomery #1	84,605	- 8,730
TWENTY-NINTH; Montgomery #2	84,605	- 8,730
THIRTIETH: Geneva,Henry Houston	88,314	- 5,021
THIRTY-FIRST: * Colbert Franklin Marion	90,331	- 3,004
THIRTY-SECOND: Macon,Dale		

DISTRICT	POPULATION	VARIATION
FIRST: * Lauderdale Limestone	98,135	+ 4,800
SECOND: * Lawrence Morgan	84,955	- 8,380
THIRD: * Blount, Cullman Winston	85,879	- 7,456
FOURTH: * Madison	117,348	+24,013
FIFTH: * Jackson Marshall	84,699	- 8,636
SIXTH: * Etowah St. Clair	122,368	+29,033
SEVENTH: * Calhoun	95,878	+ 2,543
EIGHTH: Talladega Clay, Coosa	88,621	- 4,714
NINTH: DeKalb, Cherokee Cleburne Randolph	88,108	- 5,227
TENTH: Chambers, Elmore Tallapoosa	103,359	+10,024
ELEVENTH: * Tuscaloosa	109,047	+15,712
TWELFTH: * Fayette, Lamar Walker	84,630	- 8,705
THIRTEENTH: * Jefferson #1	90,695	- 2,640
FOURTEENTH: Jefferson #2	90,695	- 2,640
FIFTEENTH: * Shelby, Chilton Autauga	76,564	-16,771
SIXTEENTH: Jefferson #3	90,695	- 2,640
SEVENTEENTH: * Butler, Conecuh Covington	77,953	-15,382
EIGHTEENTH: Jefferson #4	90,695	- 2,640
NINETEENTH: Jefferson #5	90,695	- 2,640
TWENTIETH: Jefferson #6	90,695	- 2,640
TWENTY-FIRST: * Baldwin, Monroe Escambia	104,971	+11,636
TWENTY-SECOND: Jefferson #7	90,695	- 2,640
TWENTY-THIRD: Perry, Bibb, Dallas	88,382	- 4,953
TWENTY-FOURTH: Pickens, Hale, Greene, Sumter, Choctaw	92,930	- 405
TWENTY-FIFTH: Marengo, Washington, Clarke, Wilcox	86,947	- 6,388
TWENTY-SIXTH: Lowndes Crenshaw Coffee Pike	86,896	- 6,439
TWENTY-SEVENTH: * Lee Russell	96,105	+ 2,770
TWENTY-EIGHTH: * Montgomery #1	84,605	- 8,730
TWENTY-NINTH; Montgomery #2	84,605	- 8,730
THIRTIETH: Geneva, Henry Houston	88,314	- 5,021
THIRTY-FIRST: * Colbert Franklin Marion	90,331	- 3,004
THIRTY-SECOND: Macon, Dale Bullock Barbour	95,945	+ 2,610
THIRTY-THIRD: * Mobile	104,767	+11,432
THIRTY-FOURTH: Mobile	104,767	+11,432
THIRTY-FIFTH: Mobile	104,767	+11,432

* - Present Senate Districts.

[fol. 150] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

[Title omitted]

ORDER GRANTING MOTION TO AMEND COMPLAINT—July 2, 1962

This cause is now submitted upon the motion of the plaintiffs, filed herein on June 28, 1962, by and through their attorneys of record, seeking leave of this Court to amend their complaints as last amended by adding thereto, in the prayer for relief, Subparagraph "H" to Paragraph XIV.

Upon consideration of said motion, and pursuant to the authority of Section 2284, Title 28, United States Code, it is the Order, Judgment and Decree of the undersigned, as one of the judges designated for this court, that the motion of the plaintiffs, seeking leave to amend their complaint as last amended by adding Subparagraph "H" to Paragraph XIV, be and the same is hereby granted.

Done, this the 2nd day of July, 1962.

Frank M. Johnson, Jr., United States District Judge.

[fol. 151] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

[Title omitted]

ORDER GRANTING LEAVE TO INTERVENE BY JOHN W. McCONNELL, JR., ET AL.—July 2, 1962

This cause is now submitted upon the motion of John W. McConnell, Jr., Joseph N. Langan, William M. Williams, Jr., and Garet Van Antwerp, filed herein on June 27, 1962, pursuant to Rule 24(b) and 24(c), Federal Rules of Civil Procedure, wherein said movants seek permission of this Court to intervene in this action as plaintiffs.

Upon consideration of said motion and pursuant to the authority of Section 2284, Title 28, United States Code, it is the Order, Judgment and Decree of the undersigned, as one of the judges designated for this court, that the motion of the above-named movants, seeking leave to intervene in this cause as parties plaintiff, be and the same is hereby granted.

Done, this the 2nd day of July, 1962.

Frank M. Johnson, Jr., United States District Judge.

[fol. 152] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

[Title omitted]

ORDER GRANTING LEAVE TO AMEND COMPLAINT IN INTERVENTION—July 2, 1962

This cause is now submitted upon the motion of David J. Vann, Robert S. Vance, and Richard P. Humphrey, Jr., intervening plaintiffs, seeking leave of this Court to amend the intervention complaint allowed to be filed in this cause by order of this Court dated April 20, 1962.

Upon consideration of said motion, and pursuant to the authority of Section 2284, Title 28, United States Code, it is the Order, Judgment and Decree of the undersigned, as one of the judges designated for this court, that the motion of the above-named intervenors, seeking leave to amend their complaint in intervention, be and the same is hereby granted.

Done, this the 2nd day of July, 1962.

Frank M. Johnson, Jr., United States District Judge.

[fol. 153] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

[Title omitted]

MOTION FOR A SUMMARY JUDGMENT BY PLAINTIFFS—
Filed July 2, 1962

Plaintiffs move the Court as follows:

1. That it enter, pursuant to Rule 56 of the Federal Rules of Civil Procedure, a summary judgment in plaintiffs' favor for the relief demanded in Paragraph XIV-H. of the amended complaint as last amended on the ground that there is no genuine issue as to any material fact and that plaintiffs are entitled to a judgment as a matter of law; or, in the alternative,

2. If summary judgment is not rendered in plaintiffs' favor upon the whole case or for all the relief asked and a [fol. 154] trial is necessary, that the Court, at the hearing on the motion, by examining the pleadings and the evidence before it and by interrogating counsel, ascertain what material facts are actually and in good faith controverted, and thereupon make an order specifying the facts that appear without substantial controversy and directing such further proceedings in the action as are just.

This motion is based upon all other pleadings and affidavits filed in this Court in this proceeding.

Charles Morgan, Jr., 1512 Comer Building, Birmingham 3, Alabama;

George Beach Taylor, 927 Brown-Marx Building, Birmingham 3, Alabama, Attorneys for Plaintiffs.

Jerome A. Cooper, 1329 Brown-Marx Building, Birmingham 3, Alabama, Attorney for Intervenors.

Certificate of Service (omitted in printing).

[fol. 155] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

[Title omitted]

JOINDURE IN MOTION FOR SUMMARY JUDGMENT—
Filed July 3, 1962

The following officers of the Jefferson County Democratic Campaign Committee, David J. Vann, Robert S. Vance, and Richard P. Humphrey, Jr., who have heretofore, with leave of Court, intervened as plaintiffs in this class action, do hereby respectfully join in, and support, the plaintiff's motion for a summary judgment to secure reapportionment according to the standards provided in the Constitution of Alabama.

The interveners assign as additional grounds for such relief and for other relief prayed in the complaint as amended and as adopted by the interveners the following:

(1) At the time of the ratification of the Tenth Amendment to the Constitution of the United States on December 15, 1791; the government of the State of Alabama did not exist. Following the Articles of Cession entered into by and between the State of Georgia and the United States in 1802, there was no state government exercising sovereignty over the area now constituting the State of Alabama. Except to the extent that such powers were exercised by the United States and territorial governments created by it, all of the sovereign powers reserved by the Tenth Amendment "to the states respectively, *or to the people*" were therefore vested directly in the people of the [fol. 156] Alabama Territory and not in any organized state government.

(2) The people of the Alabama Territory were authorized by Act of Congress on March 2, 1819, to form a state constitution providing for a republican form of government. 3 Stat. 489. By convention the people adopted such

a constitution on July 5, 1819, which was approved by the Resolution of the Congress admitting the State of Alabama to the Union on December 14, 1819. 3 Stat. 608. This Constitution provided in its Declaration of Rights, Article I, Section 2, "That all political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit." This recognition of the ultimate sovereignty of the people has been retained in all subsequent constitutions of the state and appears as Section 2 of the Constitution of Alabama, 1901. Except for those sovereign powers delegated with limitations to their state government, all other powers reserved to them by the Tenth Amendment remain vested in the people of Alabama.

(3) The Constitution of Alabama, 1819, as a part of its delegation of limited powers to the General Assembly provided for therein, as one of the specific conditions upon the exercise of the powers delegated, directed that the General Assembly should periodically reapportion itself to conform to changes in population of the various existing counties and of those which the Legislature was authorized to form from time to time. These directions have been preserved in substantial part in every subsequent consti- [fol. 157] tution or purported constitution providing for the government of the State of Alabama, and now appear as Sections 198, 199, 200 and 201, Constitution of Alabama, 1901.

(4) The Constitution of Alabama, 1901, requires that both houses of the Legislature (formerly called the General Assembly) be apportioned on the basis of population with the following exceptions: The House of Representatives is required to be apportioned primarily on a basis of geography in that, of the 106 members now authorized, 67 are apportioned one to each county, regardless of the sparsity of a county's population, thereby leaving only 39 to be apportioned on a basis of population; the Senate is required to be apportioned "as nearly as may be" on a pure population basis except for its prohibitions against gerrymandering which require that when a district is composed of two or more counties no county may be divided, and all counties in a district must be contiguous. This results in a tradi-

tional system of practical checks and balances: the sparsely populated counties are guaranteed a working majority in the House of Representatives as protection from majority abuse; the more densely populated counties are assured of such protection from minority abuse as their numbers from time to time may afford; no minority can acquire such an artificial stranglehold control of legislative processes as to effectively deny any citizen an effective voice in support of reasoned proposals made to those high officials exercising delegated law-making powers over him.

(5) The due process guarantee of the Fourteenth Amendment not only requires the Acts of the Legislature comply with standards of fairness taking into account all of the circumstances, including the provisions of the Constitution [fol. 158] of Alabama, such guarantee also further requires the Legislature of Alabama to follow the established known procedures provided for in the Constitution of Alabama. The delegated power to apportion the membership of the Legislature can be lawfully exercised only in accordance with the procedures established therefor. Any action by the Legislature to apportion by other procedures, or to alter those procedures, other than by constitutional convention as provided in Section 284 and Amendment XXIV of such Constitution, constitutes an unlawful usurpation of sovereign powers reserved to the people of Alabama by the Tenth Amendment to the Constitution of the United States, which powers the people, by their constitutions, have perpetually reserved unto themselves for the purpose of protecting and guaranteeing to themselves and their posterity the blessing and benefits of effective, responsive and ordered self-government in the form of a representative democracy exercising limited delegated powers, or, in other words, a republican form of government.

David J. Vann, Robert S. Vance, C. H. Erskine Smith, Attorneys for Intervening Plaintiffs.

Certificate of Service (omitted in printing).

[fol. 159] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

[Title omitted]

ORDER RE MOTION FOR SUMMARY JUDGMENT, ETC.
—July 5, 1962

This cause is now submitted upon the motion for summary judgment, filed herein on July 2, 1962, by the plaintiffs and certain intervenor-plaintiffs, and this cause is further submitted upon the motion of certain other intervenor-plaintiffs, filed herein on July 3, 1962, seeking leave of this Court to join in the said motion for summary judgment.

Upon consideration of said motions, and pursuant to the authority of Section 2284, Title 28, United States Code, it is the Order and Direction of the undersigned, as one of the judges designated for this court, that the motion for summary judgment and the motion for joinder in the motion for summary judgment will be deemed submitted to this Court on Monday, July 16, 1962, at 10:00 a.m.

It is the further Order and Direction of the undersigned, as one of the judges designated for this court and pursuant to Section 2284, Title 28, United States Code, that all parties are hereby notified that any evidence, either oral or documentary, considered by the parties to be in support of or opposition to said motions, must be filed with this Court within 10 days from the date of the Order of this Court.

This Order is entered by the undersigned on this the 5th day of July, 1962.

Frank M. Johnson, Jr., United States District Judge.

[fol. 164] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

[Title omitted]

MOTION FOR LEAVE TO AMEND COMPLAINT IN INTERVENTION—
Filed July 12, 1962

The following citizens of the United States, resident citizens and registered voters and taxpayers in Mobile County, Alabama, and members of the Citizens Committee for Representative Government on a Fair Basis, John W. McConnell, Jr., Joseph N. Langan, William M. Williams, Jr. and Garet Van Antwerp, have heretofore, by order of this Court, been granted leave to intervene as parties plaintiff in this action. These intervening Plaintiffs hereby respectfully move the Court for an order (1) granting leave to these Intervenors to amend the Complaint in Intervention and the Prayer thereof, so as to be more specific in the allegations made therein and the relief requested thereby and (2) declaring that their Complaint in Intervention shall be treated as so amended without the necessity of further pleadings, in the following particulars:

V.

These Intervenors adopt and assign, as additional grounds for the relief prayed in the Complaint, as amended and as adopted by the Intervenors, the grounds set out in the Joinder in Motion for Summary Judgment heretofore [fol. 165] filed herein by Intervenors David J. Vann, et al., and except as to ¶(4) thereof, and in addition, as to ¶(2) and ¶(5) thereof, allege as follows:

(2) That Section 36, Article I, Constitution of Alabama of 1901 (herein referred to as the "Constitution"), specifically provides that everything in the Declaration of Rights of said Constitution is excepted out of the general powers of government and shall forever remain inviolate, among

which are the rights declared by Section 35 that the purpose and object of government is to preserve the equality of citizens in public and private rights.

(5) The Fourteenth Amendment to the Constitution of the United States following the Tenth Amendment thereof is therefore a limitation on the exercise of the powers reserved by the Tenth Amendment to the states or to the people. Thus, no state, acting either through its legislative body or through its people as by amendment to the state's constitution or by constitutional convention may deny to any person within its jurisdiction the equal protection of the laws. The Constitution in establishing population as the basis for representation in *both* houses of the Legislature recognized and established in Alabama this necessity for equality and this cannot be altered in either house of such Legislature without violating the Fourteenth Amendment.

Wherefore, the Intervenors hereby amend the prayers for relief, as contained in their original Motion for Leave to Intervene by adding thereto the following prayers:

I. Intervenor-Plaintiff demand that the Court adjudge and declare:

(1) That the present apportionment of the House of Representatives and of the Senate of the Legislature of the State of Alabama violates the provisions of Section 35, Article I, of the Constitution;

[fol. 166] (2) That the proviso contained in Section 199, Article IX, of the Constitution ("provided, that each county shall be entitled to at least one representative") does not mean that each county acting alone must elect the one representative to which such county is entitled, but that each county is entitled to at least one representative who resides in said county, although such representative may be elected by voters of such county in conjunction with voters of other counties;

(3) That the proviso of Section 199, Article IX ("provided, that each county shall be entitled to at least one

representative") is repugnant with and subject to the provisions of Section 198, Article IX and Section 284, Article XVIII, as amended by Amendment XXIV of the Constitution, requiring that representation shall be based upon population;

(4) That the provision in Section 200, Article IX, of the Constitution that "No county shall be divided between two districts, and no district shall be made up of two or more counties not contiguous to each other" does not prevent the division of a county into two or more districts where the districts are wholly within the county being divided;

(5) That Section 202, Article IX, of the Constitution, by reason of the passage of time and the change of population, violates the Fourteenth Amendment of the Constitution of the United States in that it denies to the citizens of the State of Alabama the equal protection of the laws;

(6) That Section 203, Article IX of the Constitution, by reason of the passage of time and the change in population, violates the Fourteenth Amendment to the Constitution of the United States in that it denies to the citizens of the State of Alabama the equal protection of the laws;

[fol. 167] (7) That population as the basis of representation in the House of Representatives and in the Senate of the Legislature of the State of Alabama may not be changed by Constitutional Amendment without violating Section 36, Article I, and Section 284, Article XVIII, as amended by Amendment XXIV, of the Constitution;

(8) That basing representation in either the House of Representatives or the Senate of the Legislature of Alabama on any factor other than population would violate the provisions of the Fourteenth Amendment of the Constitution of the United States in that it would deny to the citizens of the State of Alabama the equal protection of the laws;

(9) That Section 1, Title 32, Code of Alabama, as adopted by the General Session of the Alabama Legislature in 1941, violates Sections 198 and 199, Article IX, of the Constitu-

tion and the Fourteenth Amendment of the Constitution of the United States;

(10) That Section 2, Title 32, Code of Alabama, as adopted by the General Session of the Alabama Legislature in 1941, violates Section 200, Article IX, of the Constitution and the Fourteenth Amendment of the Constitution of the United States;

(11) That the method of equal proportions (the method whereby the difference between the representation of any two districts is the smallest possible when measured both by the relative difference in the average population per representative and by the relative difference in the individual share in a representative, which is computed by means of a priority list obtained by dividing the population of the district by the geometric means of successive number of representatives, which is expressed by the following equation: P (priority list figure) equals population of any [fol. 168] district (A) divided by the geometric mean of its next higher assignment (k) and its present assignment (k-1), or P equals A divided by the square root of k (k-1), best satisfies state and federal constitutional requirements for equality in representation and for maintaining population as a basis for representation;

(12) That the inaction of the Legislature of the State of Alabama, after the Federal Decennial Census in 1910, 1920, 1930, 1940, 1950 and 1960 violates Section 35, Article I, of the Constitution, by depriving the citizens of the State of Alabama the enjoyment of life, liberty and property and resulting in usurpation and oppression by the State of Alabama of such citizens and violates the Fourteenth Amendment of the Constitution of the United States by depriving the citizens of the State of Alabama the equal protection of the laws;

(13) That, if the provision of Section 200, Article IX, of the Constitution ("No county shall be divided between two districts") prohibits the division of a county into two or more senatorial districts, then the number of senators in the Senate of the Alabama Legislature should be that num-

ber between 27 and 35 as required by Section 197, Article IX of the Constitution, giving least disparity between the senatorial district having the largest population and the senatorial district having the smallest population; and

(14) That the effective date of any reapportionment act adopted by the Legislature of the State of Alabama or proposed in any constitutional amendment by the Legislature of the State of Alabama may not be delayed beyond the first general election following the adjournment of the Legislature at which enacted.

J. That this Court, following the hearing set on July 16, 1962, will enter an Order granting a preliminary injunction against the Defendants, applicable to the 1962 General Election in the State of Alabama, and any and all primary [fol. 169] elections or other selections of legislative candidates by political parties in the State of Alabama for said General Election, requiring

(a) That the members of the House of Representatives of the State of Alabama and of the Senate of the State of Alabama be elected by vote of the state at large, with the candidates therefor to run by numbered positions, as required by Act No. 221 adopted at the Special Session of the Alabama Legislature in 1961;

or

(b) That the members of the House of Representatives of the State of Alabama and of the Senate of the State of Alabama be elected by vote of the state at large, with the candidates therefor to run by numbered positions, as required by Act No. 221 adopted at the Special Session of the Alabama Legislature in 1961, subject to the following conditions:

(i) the candidates for the House of Representatives to be residents of the various counties of the State of Alabama in accordance with Exhibit "A" attached hereto and made a part hereof as if set out in full herein, and

(ii) the candidates for the Senate to be residents of the various existing senatorial districts in accord-

ance with Exhibit "B" attached hereto and made a part hereof as if set out in full herein, with the 35 candidates, in the 44 positions, receiving a plurality in each position and the highest votes received among the 44 positions to be elected.

And said Intervening Plaintiffs do hereby respectfully join in and support the Plaintiff's Motion for a Summary Judgment to secure reapportionment according to the standards provided in the Constitution of Alabama, subject, however, in all respects to the requirements of the Fourteenth Amendment to the Constitution of the United States.

The grounds of this Motion are those set out in all pleadings and affidavits filed in this Court in this proceeding by [fol. 170] Plaintiff and Intervening Plaintiffs and on the further ground that the Legislature of Alabama is presently assembled in special session for the sole purpose of apportioning the members of the House of Representatives and of the Senate of the State of Alabama, as required by law, but appears not only to be giving no serious consideration to any act for such purpose that complies with the requirements of the Constitution of the State of Alabama and of the Constitution of the United States, but to be misusing its power and authority and its present malapportioned and unrepresentative basis to enact laws and to propose constitutional amendments to perpetuate the evils of its omission to follow the Constitutional mandates to reapportion itself and the oath of office of its respective members to abide by and to support the Constitution of the United States and the Constitution of the State of Alabama, and to faithfully and honestly discharge the duties of the office of a member of the Legislature, which includes the duty and mandate to reapportion itself.

John W. McConnell, Jr., Attorney for Intervening Plaintiffs.

Of Counsel:

1101 Merchants National Bank Building, Mobile, Alabama.

Certificate of Service (omitted in printing).

[fol. 171]

EXHIBIT "A" TO MOTION

Number	*County*
1	Autauga
2	Baldwin
3	Barbour
4	Bibb
5	Blount
6	Bullock
7	Butler
8	Calhoun
9	Calhoun
10	Calhoun
11	Chambers
12	Cherokee
13	Chilton
14	Choctaw
15	Clarke
16	Clay
17	Cleburne
18	Coffee
19	Colbert
20	Conecuh
21	Coosa
22	Covington
23	Crenshaw
24	Cullman
25	Dale
26	Dallas
27	Dallas
28	DeKalb
29	Elmore
30	Escambia
31	Etowah
32	Etowah
33	Etowah
34	Fayette
35	Franklin
36	Geneva
37	Greene

Number	*County*
38	Hale
39	Henry
40	Houston
41	Jackson
42	Jefferson
43	Jefferson
44	Jefferson
45	Jefferson
46	Jefferson
47	Jefferson
48	Jefferson
49	Jefferson
50	Jefferson
[fol. 172]	
51	Jefferson
52	Jefferson
53	Jefferson
54	Jefferson
55	Jefferson
56	Jefferson
57	Jefferson
58	Jefferson
59	Lamar
60	Lauderdale
61	Lauderdale
62	Lawrence
63	Lee
64	Limestone
65	Lowndes
66	Macon
67	Madison
68	Madison
69	Madison
70	Marengo
71	Marion
72	Marshall
73	Mobile
74	Mobile
75	Mobile

Number	*County*
76	Mobile
77	Mobile
78	Mobile
79	Mobile
80	Mobile
81	Monroe
82	Montgomery
83	Montgomery
84	Montgomery
85	Montgomery
86	Morgan
87	Morgan
88	Perry
89	Pickens
90	Pike
91	Randolph
92	Russell
93	Shelby
94	St. Clair
95	Sumter
96	Talladega
97	Talladega
98	Tallapoosa
99	Tuscaloosa
100	Tuscaloosa
[fol. 173]	
101	Tuscaloosa
102	Walker
103	Walker
104	Washington
105	Wilcox
106	Winston

[fol: 174]

EXHIBIT "B" TO MOTION

Number	*District*
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
9	9
10	10
11	11
12	12
13	13
14	13
15	13
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19	13
20	14
21	15
22	16
23	17
24	18
25	19
26	20
27	21
28	22
29	23
30	24
31	25
32	26
33	27
34	28
35	28
36	29

Number	*District*
37	30
38	31
39	32
40	33
41	33
42	33
43	34
44	35

[fol. 175] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

[Title omitted]

MOTION FOR A PRELIMINARY INJUNCTION
—Filed July 13, 1962

Upon the verified bill of complaint filed herein, and the affidavits of Charles Morgan, Jr. and George Peach Taylor, the Plaintiffs move the Court to issue a preliminary injunction enjoining and restraining the Defendants, MacDonald Gallion and Bettye Frink, Attorney General and Secretary of State of the State of Alabama, respectively, and the Defendants, J. Paul Meeks, John A. Sankey and Harrell Hammonds, Judges of Probate of Jefferson, Montgomery and Lowndes Counties, respectively, and all other judges of probate of the State of Alabama, and their successors in office, and their agents, officers, assistants and employees [fol. 176] from: doing and performing any and all acts, things, and duties, including, but not limited to, the preparation and distribution of ballots, receipt of returns and certificates of the total number of electors having voted, being amongst those present at the time of ascertainment of whether or not a majority of the qualified electors of the State voted "yes", and doing any other act or thing or performing any other duty in connection with elections which would enable the conduct of an election on a constitutional

amendment adopted by the Legislature of Alabama on the 12th day of July, 1962, being Act No. ....., and commonly termed the "67 Senator Amendment", a copy of which such Act is attached hereto, marked Exhibit "A", and thereby made a part of this motion, and further enjoining and restraining the above named defendants from doing or performing any of the above enumerated acts, things or duties with respect to any other constitutional amendment which would, in any manner, change, alter, amend or delete those provisions of the Constitution of Alabama of 1901 which establish population as the proper basis for districting and apportioning the Legislature of Alabama at least until such time as said Legislature has reapportioned itself in accordance with the presently applicable provisions of the said Constitution.

The grounds of this motion, as more fully set forth in the complaint as amended, and the annexed affidavits of Charles Morgan, Jr. and George Peach Taylor are that:

(a) The Legislature (House of Representatives and Senate) of the State of Alabama is severely mal-apportioned and as a result of such mal-apportionment the conducting of the 1962 general election on the same basis as in the past will result in a continuation of a system or scheme of representation in such Legislature which deprives the Plaintiffs of the equal protection of the law.

[fol. 177] (b) The Defendants, unless enjoined, threaten to conduct and will conduct an election as provided for in said amendment to the Constitution of Alabama.

(c) The conducting of an election on the said constitutional amendment to the Constitution of Alabama of 1901 will cause immediate and irreparable injury to Plaintiffs and all others similarly situated.

(d) Unless the Defendants are restrained pending final disposition of this action, the injury to Plaintiffs will be irreparable even with final judgment for Plaintiffs.

(e) No injury will be sustained by Defendants or by the public through the issuance of a preliminary injunction.

(f) The issuance of a preliminary injunction as prayed for herein will not cause undue inconvenience or loss to

Defendants, but will prevent irreparable injury to Plaintiffs.

(g) Plaintiffs respectfully suggest that under the provisions of Subdivision (4) of Section 2284, Title 28, United States Code, that a hearing on this petition for preliminary injunction be set for 10:00 A. M. on the 16th day of July, 196?

Charles Morgan, Jr., 1512 Comer Building, Birmingham 3, Alabama;

George Peach Taylor, 927 Brown-Marx Building, Birmingham 3, Alabama, Attorneys for Plaintiffs.

[fol. 178] Certificate of Service (omitted in printing).

[fol. 179]

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

NORTHERN DIVISION

AFFIDAVIT OF CHARLES MORGAN, JR. TO SUPPORT MOTION

Charles Morgan, Jr. being duly sworn on oath, deposes and says as follows:

1. That he is a plaintiff in the above entitled action.

2. That this is an action to protect the voting rights of the plaintiffs and all others who are similarly situated and to protect their rights to equal protection of the law by obtaining a declaration of the rights of the plaintiffs pursuant to 58 Stat. L. 890, 28 U.S.C. 2201, in the premises, to-wit:

A. That the present legislative apportionment of the State of Alabama has deprived and continues to deprive the plaintiffs of liberty and property without due process of law and has denied and continues to deny the plaintiffs equal protection of the law in violation of the Fourteenth Amendment to the Constitution of the United States of America.

B. That the apportionment of the Legislature of the State of Alabama as established under and by virtue of Sections 1 and 2 of Title 32 of the Alabama Code of 1940, as amended, and Sections 202 and 203 of Article 9 of the Constitution of Alabama of 1901 is void and invalid as being contrary to the Fourteenth Amendment to the Constitution of the United States of America and the Consti- [fol. 180] tution of Alabama of 1901 because of the failure of the Legislature of Alabama to redistrict the counties forming senatorial districts and to reapportion the number of senators thereby in accordance with the present population of Alabama as set forth in the Federal decennial census of 1960, and because of the failure of the Legislature of Alabama to reapportion the House of Representatives of the Legislature of Alabama in accordance with present population of Alabama as set forth in the Federal decennial census of 1960.

C. That the right of the plaintiffs to vote as guaranteed by the laws and Constitution of Alabama of 1901 and the laws and Constitution of the United States has been impaired by the failure of the Legislature of Alabama to redistrict the counties forming senatorial districts and to reapportion the number of senators thereby in accordance with the present population of Alabama as set forth in the Federal decennial census of 1960, and because of the failure of the Legislature of Alabama to reapportion the House of Representatives of the Legislature of Alabama in accordance with the present population of Alabama as set forth in the Federal decennial census of 1960.

D. That the Legislature of Alabama may not propose an amendment to the Constitution of Alabama of 1901 which would effect a change, alteration or amendment of those provisions of the Constitution of Alabama of 1901 which establish population as the proper basis for redistricting and reapportioning the Legislature until such time as the Legislature has redistricted and reapportioned itself in accordance therewith, if at all.

3. That on the 14th day of April, 1962, this Honorable Court entered an order which stated in part as follows:

"The controlling constitutional formula which runs throughout the Constitution of Alabama is thus ex-
[fol. 181] pressed in the last sentence of Section 284 of said Constitution: 'Representation in the legislature shall be based upon population, and such basis of representation shall not be changed by constitutional amendments.' See also Sections 198 to 201, inclusive. If that formula is met, then there can be no valid objection under the equal protection clause or any other part of the Constitution of the United States, which is, of course, the supreme law of the Land, binding alike on this Court and on the Legislature of Alabama (Article VI, Clauses 2 and 3 of the Constitution of the United States). It is necessary that any action taken by the Legislature comply with constitutional standards, and it is important that such standards be met not half-heartedly but fully, because once there has been a legislative reapportionment, unless it so completely fails to meet constitutional standards that it must be set aside by court order, it will not be subject to alteration until the next session of the Legislature after the decennial census in 1970 (Constitution of Alabama, Section 198)."

4. That on the 12th day of July, 1962, the Legislature of Alabama did enact Act No. ..... under and by virtue of Section 284 of Article XVIII of the Alabama Constitution of 1901 (as amended, by Amendment XXIV), the said Act proposing an amendment to such Constitution, a copy of which such Act is attached to Plaintiffs' Motion for A Preliminary Injunction.

5. That Act No. ....., hereafter sometimes referred to as the "67 Senator Amendment", apportions representation in the House of Representatives on a political unit modified by population basis the "equal proportions" method of allocating seats of such House of Representatives having been complied with therein. Under the terms and provisions of said Act No. ..... the basis of representation in the said House of Representatives is based on political units in that 67 members of said House of Repre-

sentatives are to be apportioned on the basis of one representative per county rather than population, the remaining [fol. 182] 39 members of said House of Representatives to be apportioned on a population basis as provided in Section 199 of the Alabama Constitution of 1901.

6. That the "67 Senator Amendment" provides for the establishment of a strict geographical or political unit distribution of senatorial districts, one such district to be coextensive with each of the 67 counties of the State of Alabama and such constitutional amendment does not comply with the terms and provisions of the last sentence of said Section 284 of said Constitution in that such sentence provides:

> "Members in the Legislature shall be based upon population, and such basis of such representation shall not be changed by constitutional amendment."

7. That under the terms and provisions of the "67 Senator Amendment", the House of Representatives of the Legislature of Alabama would be apportioned primarily on an arbitrary basis and the Senate of the Legislature of the State of Alabama would be apportioned and distributed on an arbitrary basis, and the adoption of such amendment to the Alabama Constitution of 1901 will result in a continued deprivation to the Plaintiffs of liberty and property without due process of law and will continue to deny to the plaintiffs equal protection of the laws in violation of the Fourteenth Amendment of the Constitution of the United States of America, as well as the Alabama Constitution of 1901.

8. That the proposed "67 Senator Amendment" is void in that its adoption would result in a deprivation to Plaintiffs of rights protected by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States of America in that the standards to be applied under said clauses should be no lower than standards expressly provided in the Constitution of Alabama which can be enforced only by this Court.

[fol. 183] 9. The Defendants, unless enjoined, threaten to conduct and will conduct an election as provided for in said amendment to the Constitution of Alabama.

10. The conducting of an election on the said constitutional amendment to the Constitution of Alabama of 1901 will cause immediate and irreparable injury to Plaintiffs and all others similarly situated.

11. Unless the Defendants are restrained pending final disposition of this action, the injury to Plaintiffs will be irreparable even with final judgment for Plaintiffs.

12. No injury will be sustained by Defendants or by the public through the issuance of a preliminary injunction.

13. The issuance of a preliminary injunction as prayed for herein will not cause undue inconvenience or loss to Defendants, but will prevent irreparable injury to Plaintiffs.

Charles Morgan, Jr.

Sworn to and suscribed before me
this 12th day of July, 1962.

Eleanor F. Carlee, Notary Public.

[Seal]

[fol. 184]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

AFFIDAVIT OF GEORGE PEACH TAYLOR TO SUPPORT MOTION

George Peach Taylor being duly sworn on oath, deposes and says as follows:

1. That he is a plaintiff in the above entitled action.

2. That this is an action to protect the voting rights of the plaintiffs and all others who are similarly situated and

to protect their rights to equal protection of the law by obtaining a declaration of the rights of the plaintiffs pursuant to 58 Stat. L. 890, 28 U.S.C. 2201, in the premises, to-wit:

A. That the present legislative apportionment of the State of Alabama has deprived and continues to deprive the plaintiffs of liberty and property without due process of law and has denied and continues to deny the plaintiffs equal protection of the law in violation of the Fourteenth Amendment to the Constitution of the United States of America.

B. That the apportionment of the Legislature of the State of Alabama as established under and by virtue of Sections 1 and 2 of Title 32 of the Alabama Code of 1940, as amended, and Sections 202 and 203 of Article 9 of the Constitution of Alabama of 1901 is void and invalid as being contrary to the Fourteenth Amendment to the Constitution of the United States of America and the Constitu-
[fol. 185] tion of Alabama of 1901 because of the failure of the Legislature of Alabama to redistrict the counties forming senatorial districts and to reapportion the number of senators thereby in accordance with the present population of Alabama as set forth in the Federal decennial census of 1960, and because of the failure of the Legislature of Alabama to reapportion the House of Representatives of the Legislature of Alabama in accordance with present population of Alabama as set forth in the Federal decennial census of 1960.

C. That the right of the plaintiffs to vote as guaranteed by the laws and Constitution of Alabama of 1901 and the laws and Constitution of the United States has been impaired by the failure of the Legislature of Alabama to redistrict the counties forming senatorial districts and to reapportion the number of senators thereby in accordance with the present population of Alabama as set forth in the Federal decennial census of 1960, and because of the failure of the Legislature of Alabama to reapportion the House of Representatives of the Legislature of Alabama in accordance with the present population of Alabama as set forth in the Federal decennial census of 1960.

D. That the Legislature of Alabama may not propose an amendment to the Constitution of Alabama of 1901 which would effect a change, alteration or amendment of those provisions of the Constitution of Alabama of 1901 which establish population as the proper basis for redistricting and reapportioning the Legislature until such time as the Legislature has redistricted and reapportioned itself in accordance therewith, if at all.

3. That on the 14th day of April, 1962, this Honorable Court entered an order which stated in part as follows:

> "The controlling constitutional formula which runs throughout the Constitution of Alabama is thus ex- [fol. 186] pressed in the last sentence of Section 284 of said Constitution: 'Representation in the legislature shall be based upon population, and such basis of representation shall not be changed by constitutional amendments.' See also Sections 198 to 201, inclusive. If that formula is met, then there can be no valid objection under the equal protection clause or any other part of the Constitution of the United States, which is, of course, the supreme law of the Land, binding alike on this Court and on the Legislature of Alabama (Article VI, Clauses 2 and 3 of the Constitution of the United States). It is necessary that any action taken by the Legislature comply with constitutional standards, and it is important that such standards be met not half-heartedly but fully, because once there has been a legislative reapportionment, unless it so completely fails to meet constitutional standards that it must be set aside by court order, it will not be subject to alteration until the next session of the Legislature after the decennial census in 1970 (Constitution of Alabama, Section 198)."

4. That on the 12th day of July, 1962, the Legislature of Alabama did enact Act No. ..... under and by virtue of Section 284 of Article XVIII of the Alabama Constitution of 1901 (as amended, by Amendment XXIV), the said Act proposing an amendment to such Constitution, a copy of which such Act is attached to Plaintiffs' Motion for A Preliminary Injunction.

5. That Act No. ....., hereafter sometimes referred to as the "67 Senator Amendment", apportions representation in the House of Representatives on a political unit modified by population basis the "equal proportions" method of allocating seats of such House of Representatives having been complied with therein. Under the terms and provisions of said Act No. ..... the basis of representation in the said House of Representatives is based on political units in that 67 members of said House of Representatives are to be apportioned on the basis of one representative per county rather than population, the remaining 39 [fol. 187] members of said House of Representatives to be apportioned on a population basis as provided in Section 199 of the Alabama Constitution of 1901.

6. That the "67 Senator Amendment" provides for the establishment of a strict geographical or political unit distribution of senatorial districts, one such district to be coextensive with each of the 67 counties of the State of Alabama and such constitutional amendment does not comply with the terms and provisions of the last sentence of said Section 284 of said Constitution in that such sentence provides:

> "Members in the Legislature shall be based upon population, and such basis of such representation shall not be changed by constitutional amendment."

7. That under the terms and provisions of the "67 Senator Amendment", the House of Representatives of the Legislature of Alabama would be apportioned primarily on an arbitrary basis and the Senate of the Legislature of the State of Alabama would be apportioned and distributed on an arbitrary basis, and the adoption of such amendment to the Alabama Constitution of 1901 will result in a continued deprivation to the Plaintiffs of liberty and property without due process of law and will continue to deny to the plaintiffs equal protection of the laws in violation of the Fourteenth Amendment of the Constitution of the United States of America, as well as the Alabama Constitution of 1901.

8. That the proposed "67 Senator Amendment" is void in that its adoption would result in a deprivation to Plaintiffs of rights protected by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States of America in that the standards to be applied under said clauses should be no lower than standards expressly provided in the Constitution of Alabama which can be enforced only by this Court.

[fol. 188] 9. The Defendants, unless enjoined, threaten to conduct and will conduct an election as provided for in said amendment to the Constitution of Alabama.

10. The conducting of an election on the said constitutional amendment to the Constitution of Alabama of 1901 will cause immediate and irreparable injury to Plaintiffs and all others similarly situated.

11. Unless the Defendants are restrained pending final disposition of this action, the injury to Plaintiffs will be irreparable even with final judgment for Plaintiffs.

12. No injury will be sustained by Defendants or by the public through the issuance of a preliminary injunction.

13. The issuance of a preliminary injunction as prayed for herein will not cause undue inconvenience or loss to Defendants, but will prevent irreparable injury to Plaintiffs.

George Peach Taylor

Sworn to and subscribed before me
this 12th day of July, 1962.

Eleanor F. Carlee, Notary Public.

[Seal]

[fol. 189]

EXHIBIT "A" TO MOTION

ACT No. .....

Proposing an amendment to the Constitution of Alabama relating to legislative apportionment.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. The following amendment to the Constitution of Alabama 1901 is proposed and shall become valid as a part thereof when approved and proclaimed as prescribed by law:

Proposed Amendment

1. The legislature of Alabama shall consist of a senator for each county and 106 members of the house of representatives, to be apportioned among the the several counties as herein prescribed; provided, that in addition to the above number of representatives each new county hereafter created shall be entitled to at least one representative.

2. At the general election in 1966, and every four years thereafter, a senator shall be elected by the qualified electors of each county in the state.

3. At the general election in 1966, and every four years thereafter, until the house of representatives is reapportioned as herein provided, the qualified electors of each county in the state shall elect such number of representatives as may be apportioned to the county as follows:

The county of Jefferson shall have and elect seventeen representatives; the county of Mobile shall have and elect eight representatives; the county of Montgomery shall have and elect four representatives; the counties of Calhoun, Etowah, Madison and Tuscaloosa shall each have and elect three representatives; the counties of Dallas, Lauderdale, Morgan, Talladega and Walker shall each have and elect two representatives; and the remaining counties of the state shall each have and elect one representative.

4. On the first day, or within one week thereafter, of the regular session of the legislature in 1971, and every fifth regular session thereafter, the clerk of the house of representatives shall transmit to the secretary of state a statement showing the whole number of persons in each county under the most recent decennial census of the United States, and the number of representatives to which each county will be entitled under an apportionment of the then existing number of representatives by the method known as the method of equal proportions, no county to receive less than one representative.

5. In Section 284 of this Constitution as amended, strike out the last sentence thereof and insert the following sentence:

Representation in the house of representatives of the legislature shall be based upon population.

[fol. 190] 6. Article IX (Sections 197-203) of the Constitution is hereby expressly repealed.

Section 2. An election upon the proposed amendment is ordered to be held on the date of the general election next succeeding the final adjournment of the current session of the Legislature. The election shall be held in accordance with the provisions of Sections 284 and 285 of the Constitution of Alabama, as amended, and Chapter 1, Article 18, Title 17 of the Code of Alabama 1940.

Section 3. Notice of the election and of the proposed amendment shall be given by proclamation of the Governor, which proclamation shall be published once a week for four successive weeks next preceding the day appointed for the election in a newspaper in each county of the State. In every county in which no newspaper is published, a copy of the notice shall be posted at each courthouse and post office.

[fol. 191] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

[Title omitted]

AMENDED ANSWER OF SECRETARY OF STATE
—Filed July 13, 1962

Now comes defendant Bettye Frink as Secretary of State of the State of Alabama and amends her answer heretofore filed by adding the following paragraphs.

A. Since the filing of this suit and before July 16, 1962, the Legislature of Alabama has passed two acts relating to reapportionment of its membership. Copies of these acts are attached to the answer of MacDonald Gallion as Attorney General of Alabama and are herein adopted and made a part hereof by reference.

B. The said acts have now rendered the plaintiffs' and intervenors' complaints as ones which do not present a claim upon which relief may be granted.

C. The said acts have caused this case to present matters which have become moot and the suit is subject to dismissal by the Court.

D. The said acts comply with all constitutional standards subject to Federal jurisdiction, but if this defendant is mistaken she respectfully requests the Court for further guidance as to what specific action the Legislature must take in order to comply with the Court's order of April 14, 1962. In this connection defendant avers that the present Legislature is in recess and another will be elected in November 1962.

[fol. 192] E. Defendant avers that compliance with constitutional standards, it not now met, may be met by the Legislature if it knows specifically what the Court requires.

MacDonald Gallion, Attorney General of Alabama; Leslie Hall, Assistant Attorney General of Alabama; Gordon Madison, Assistant Attorney General of Alabama, Attorneys for said Defendant.

Certificate of Service (omitted in printing).

[fol. 193] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

[Title omitted]

AMENDED ANSWER OF ATTORNEY GENERAL
—Filed July 13, 1962

Now comes the defendant, MacDonald Gallion, as Attorney General of Alabama and amends his answer filed in this cause by setting forth and alleging the following in the alternative.

First Defense

The Legislature has passed two acts, copies of which are attached hereto and made a part hereof as Exhibits "A" and "B".

Defendant avers that these acts, one or both, meet the constitutional standards referred to by the Court in its order of April 14, 1962.

Second Defense

The last sentence of Section 284, Constitution of Alabama 1901, provides that representation in the Legislature shall be based upon population, and such basis of representation shall not be changed by constitutional amendment.

The Legislature under Section 44, Constitution of Alabama 1901, consists of a senate and house of representatives; therefore, representation in both the Senate and House must be based upon population.

Despite these provisions placed in the organic law by the Constitutional Convention of 1901, it immediately by other provisions apportioned the Legislature, both houses, on a basis which is not upon population. The population [fol. 194] of counties in 1900 is shown by Exhibit "C" hereto attached and made a part hereof.

The said Constitutional Convention likewise placed in the organic law other provisions appearing as Sections 197, 198, 199, 200, and 201 of the 1901 Alabama Constitution.

Defendant avers that these sections render it impossible to apportion both houses, or either house on a population basis.

Section 199 provides that each county is entitled to one representative. In 1900 the population of Winston County was 9,554 and Greene 24,182, yet each had only one representative. Defendant avers that this was not then and is not now an apportionment according to the number of inhabitants.

Madison County with 43,702 inhabitants had two representatives, but Butler County with 25,761 inhabitants also had two. Defendant avers that this is not an apportionment based upon population.

Defendant avers that in the Senate, Lowndes County in 1900 had a senator of its own with 35,315 inhabitants, while Jefferson County with 140,420 inhabitants had the same representation as Lowndes. In similar fashion Wilcox County with 35,631 inhabitants had one senator, while Montgomery County with 72,047 inhabitants had only one also. This is not apportionment in the Senate upon a population basis.

Defendant further avers that by Article IX, Constitution of Alabama 1901, and subsequent statutes, the House consists of 106 members and the Senate 35; that the whole number of senators shall be not less then one-fourth or more than one-third of the whole number of representatives; that the State is to be divided into as many senatorial districts as there are senators, which districts shall be as nearly equal to each other in the number of inhabitants as may be; each district to have one senator and no more; no county shall be divided between two districts, and no

district shall be made up of two or more counties not contiguous to each other.

Jefferson County has always been considered as a separate senatorial district. According to the last Federal Census, it has a population of 634,864. The state population is 3,266,740, roughly five times the population of Jefferson. To fix districts on the basis of population con- [fol. 195] sidering Jefferson County as a separate district there could be only five in all and five senators in all. Since the number of senators shall be not less than one-fourth or more than one-third of the whole number of representatives, twenty house members would be required for a five member senate. This cannot be, however, because each county is entitled to one representative, sixty-seven in all.

Defendant avers that it is contended by some that Jefferson County could be divided into senatorial districts under the population formula, but others point to the constitutional prohibition that "no county shall be divided between two districts."

Defendant further avers that inconsistency, conflicts, and impossible compliance requirements are contained in the organic law of Alabama which has heretofore rendered it impossible to meet the equal protection or due process provision of the Fourteenth Amendment to the Constitution of the United States, so long as said provisions remain in the organic law unchallenged on constitutional grounds.

Wherefore, defendant avers and contends that when so considered the last sentence of Section 284, Constitution of Alabama 1901, is unconstitutional and void as being in violation of the Fourteenth Amendment to the Constitution of the United States; that the formulas provided by Sections 199 and 200 conflict with said last sentence in Section 284 and cannot be applied so as to apportion the Legislature on a population basis. These conditions have been the real ones bringing about the alleged violation of the Fourteenth Amendment by the inactivity of the Legislature in apportioning and should be by this court corrected or avoided in deciding the validity of the present acts, Exhibits "A" and "B" as being in compliance with the Federal Constitution.

Third Defense

Defendant avers that the sole question presented here is whether or not the acts of the Legislature, one or both, comply with the Fourteenth Amendment to the Constitution of the United States; that the acts were passed in good faith after careful and deliberate consideration by both the Senate and House, and in the context of this case present a rational plan involving no invidious discrimination.

If mistaken, however, defendant respectfully requests the Court to point out wherein the acts of the Legislature are [fol. 196] not rational and to lay down specific requirements to meet the constitutional test and then give the Legislature to be elected in November 1962 an opportunity to meet those requirements by a specific date.

This defendant believes that a healthy respect for the division of powers between the central government and the states is conducive to harmonious and effective government on all levels.

In *MaGraw* v. *Donovan*, 163 F.Supp. 184, in a similar case, the Court followed this procedure and said:

> "We must have a 'scrupulous regard for the rightful independence of the state governments,' and should refrain from acting where proper recourse may be had to a branch or tribunal of the state government."

See also *Dyer* v. *Kazuhisa Abe*, 138 F.Supp. 220, 256 F.2d 728; *Asbury Park Press* v. *Woolley*, 161 A.2d 705; *MaGraw* v. *Donovan*, 159 F.Supp. 901, 177 F.Supp. 803; *Baker* v. *Carr*, Civil Action 2724, after remandment, decided June 24, 1962; *Toombs* v. *Fortson, Ga.*, Civil Action No. 7883, decided May 25, 1962.

MacDonald Gallion, Attorney General of Alabama; Leslie Hall, Assistant Attorney General of Alabama; Gordon Madison, Assistant Attorney General of Alabama, Attorneys for said Defendant.

Certificate of Service (omitted in printing).

[fol. 197]

EXHIBIT "A" TO AMENDED ANSWER

THE STATE OF ALABAMA

DEPARTMENT OF STATE

I, BETTYE FRINK, Secretary of State of the State of Alabama, do hereby certify that the pages hereto attached, contain a true, accurate and literal copy of Act No. 91, House Bill 59, passed in the 1962 Special Session of the Legislature and approved by the Governor on July 12, 1962, as the same appears on file and of record in this office.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State, at the Capitol, in the City of Montgomery, this 12th day of July One Thousand Nine Hundred and Sixty-two.

[SEAL]

Secretary of State.

[fol. 198]

Act #91—

Approved July 12, 1962

Bevill, Shumate, Gilchrist, Hanby, Oden

N. 59

Enrolled, An Act, To fix the number of senators and representatives in the legislature, divide the state into senatorial districts, and apportion the senators and representatives among the several districts and counties.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. The senate of the legislature shall be composed of 35 senators representing 35 senatorial districts, each district to elect one senator and no more.

Section 2. The state is hereby divided into 35 senatorial districts as follows:

First, the counties of Lauderdale and Limestone; second, the counties of Lawrence and Morgan; third, the counties

of Cullman and Winston; fourth, the county of Madison; fifth, the counties of Jackson and Marshall; sixth, the county of Etowah; seventh, the county of Calhoun; eighth, the county of Talladega; ninth, the counties of Randolph and Chambers; tenth, the counties of Elmore and Tallapoosa; eleventh, the county of Tuscaloosa; twelfth, the counties of Fayette and Walker; thirteenth, the county of Jefferson; fourteenth, the counties of Pickens and Lamar; fifteenth, the counties of Autauga, Chilton and Shelby; sixteenth, the counties of Monroe and Wilcox; seventeenth, the counties of Butler, Covington and Conecuh; eighteenth, the counties of Bibb and Perry; nineteenth, the counties of Clarke, Choctaw and Washington; twentieth, the counties of Marengo and Sumter; twenty-first, the counties of Baldwin and Escambia; twenty-second, the counties of Blount and St. Clair; twenty-third, the counties of Dale and Geneva; twenty-fourth, the counties of Barbour and Pike; twenty-fifth, the counties of Coffee and Crenshaw; twenty-sixth, the counties of Bullock and Macon; twenty-seventh, the counties of Lee and Russell; twenty-eighth, the county of Montgomery; twenty-ninth, the counties of Cherokee and DeKalb; thirtieth, the counties of Dallas and Lowndes; thirty-first, the counties of Colbert, Franklin and Marion; thirty-second, the counties of Greene and Hale; thirty-third, the county of Mobile; thirty-fourth, the counties of Coosa, Clay and Cleburne; thirty-fifth, the counties of Henry and Houston.

In districts consisting of more than one county, the senators shall not be elected for more than one term consecutively from any one county in the district, but shall reside in and be elected alternately and in turn from each of the counties within such district. The first senator to be elected in such districts shall reside in the county having the largest population, except where that county had the last preceding senator. It is provided, however, that any senator in office on the effective date of this enactment shall be eligible to succeed himself as a member of the Senate, any other provision of this paragraph to the contrary notwithstanding.

Section 3. The house of representatives of the legislature shall consist of 106 members distributed among the several counties of the state as follows:

The county of Jefferson shall have and elect 12, the county of Mobile 6, and the county of Montgomery 4; the counties of Calhoun, Etowah, Madison and Tuscaloosa 3 each; the counties of Baldwin, Colbert, Cullman, Dallas, Houston, Lauderdale, Lee, Marshall, Morgan, Russell, Talladega and Walker 2 each; and the remaining counties 1 each.

Section 4. This Act shall take effect for the election of senators and representatives at the general election to be [fol. 199] held in November 1966, and shall be effective thereafter until the legislature is reapportioned according to law.

Section 5. The provisions of this Act are severable. If any part of this Act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

/s/ Virgis M. Ashworth
Speaker of the House of Representatives

/s/ Albert Boutwell
President and Presiding Officer of the Senate

House of Representatives
July 10, 1962

I hereby certify that the within Act originated in and was passed by the House June 26, 1962 as amended.

/s/ Oakley Melton, Jr.
Clerk

Senate	7/ 7/62	Amended and Passed
House	7/10/62	Concurred in Senate Amendment

[fol. 200]

EXHIBIT "B" TO AMENDED ANSWER

CLERK'S NOTE

Exhibit "B" to amended answer—Senate Bill No. 29 has been omitted from the record here. Please see side folio 376, page 157.

[fol. 202]

EXHIBIT "C" TO AMENDED ANSWER

POPULATION OF ALABAMA COUNTIES—1900

County	Population	House
Autauga	17,915	1
Baldwin	13,194	1
Barbour	35,152	2
Bibb	18,498	1
Blount	23,119	1
Bullock	31,944	2
Butler	25,761	2
Cullman	17,849	1
Chambers	32,554	2
Cherokee	21,096	1
Chilton	16,522	1
Choctaw	18,136	1
Clarke	27,790	2
Clay	17,099	1
Cleburne	13,206	1
Coffee	20,972	1
Colbert	22,341	1
Conecuh	17,514	1
Coosa	16,144	1
Covington	15,364	1
Crenshaw	19,668	1
Calhoun	34,874	2
Dale	21,189	1
Dallas	54,857	3
DeKalb	23,558	1
Elmore	26,099	2
Escambia	11,320	1

County	Population	House
Etowah	27,361	2
Fayette	14,132	1
Franklin	16,511	1
Geneva	19,096	1
Greene	24,182	1
Hale	31,011	2
Henry	36,147	2
Jackson	30,508	2
Jefferson	140,420	7
Lamar	16,084	1
Lauderdale	26,559	2
Lawrence	20,124	1
Lee	31,826	2
Limestone	22,387	1
Lowndes	35,651	2
Macon	23,126	1
Madison	43,702	2
Marengo	38,315	2
Marion	14,497	1
Marshall	23,289	1
Mobile	62,740	3
Monroe	23,666	1
Montgomery	72,047	4
Morgan	28,820	2
Perry	31,783	2
Pickens	24,402	1
Pike	29,172	2
Randolph	21,647	1
Russell	27,083	2
St. Clair	19,425	1
Shelby	23,684	1
Sumter	32,710	2
Talladega	35,773	2
Tallapoosa	29,675	2
Tuscaloosa	36,147	2
Walker	25,162	2
Washington	11,134	1
Wilcox	35,631	2
Winston	9,554	1

[fol. 203]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
(NORTHERN DIVISION)

[Title omitted]

AFFIDAVIT OF DAVID J. VANN—Filed July 14, 1962

State of Alabama)
Jefferson County)

Before me, Clariece D. Sheram, a Notary Public in and for said State and County, personally appeared David J. Vann, who is known to me, and who, having been duly sworn, deposed and said:

That he personally made the computations shown in Tables I through XII. Such computations are based on the 1960 United States census. Computations with respect to the House of Representatives apply the standard statistical methods set out in "A Survey of Methods of Reapportionment in Congress," by Edward V. Huntington, Department of Mathematics, Harvard University, Senate Document No. 304, 76th Congress, Third Session (1940). Computations with respect to the Senate were made on a trial basis until what appears to be the most nearly perfect combination of political units was discovered. All computations have been checked by him for accuracy and to the best of his knowledge and belief they are true and correct.

That as Chairman of the Jefferson County Democratic Campaign Committee he has formally requested the Governor to seek an advisory opinion from the Supreme Court of Alabama, he petitioned the Legislature to amend the reapportionment bills enacted, pointing out their specific objections thereto, and he petitioned the Governor to use his power of executive amendment under Section 125 of the Constitution of 1901 to recommend changes in such bill as required by the Constitution of Alabama.

David J. Vann.

Sworn to and subscribed before
me this 13th day of July, 1962.

Clariece D. Sheram, Notary Public, Jefferson County, Alabama—My Commission Expires: 6/22/68.

[File endorsement omitted]

[fol. 204]

APPENDIX A TO AFFIDAVIT

Standard Methods of Reapportionment for the House of Representatives

A comprehensive discussion of reapportionment methods is set out in Senate Document No. 304, 76th Congress, Third Session, "A Survey of Methods of Reapportionment in Congress," by Edward V. Huntington, Department of Mathematics, Harvard University (1940). The discussion which follows is a brief resume of that study, applied to Alabama.

There are five methods of computing apportionment of legislative bodies having a fixed size limitation. These five methods, which are the only workable methods which can be applied consistently without the production of mathematical paradoxes are as follows:

1. Equal Proportions
2. Harmonic Means
3. Major Fractions
4. Smallest Divisors
5. Greatest Divisors

When applied to a legislature the size of Alabama's, each is merely a method of distributing the few extra members on a population basis. Most of the members, 67 of the 106, are distributed on a basis of pure geography, one to each county. Each of these methods is explained mathematically here. And in Tables I, II, III, IV and V to this brief each method is explained statistically.

I. Equal Proportions

The method of Equal Proportions endeavors to equalize the representation between counties in the legislative body of a fixed size by reducing as much as possible the per- [fol. 205] centage difference between the representation of each county. The statistical method for making assignments of all seats is shown in Table I to this brief. Individual county seats are explained below.

Under this method, under any proposed reapportionment, the propriety of the transfer of a seat from one county to another can be tested if you know the population of the counties or districts involved by the application of either of two seats.

> Test #1. *Percentage difference between districts.* A proposed transfer of a seat from one county to another should be made, if, and only if, the percentage difference between the number of persons represented by an individual representative from the county would be reduced by the transfer.

This test can be demonstrated by the following example taken from a current Alabama problem. Under one proposal Montgomery County, with a population of 169,302, would be assigned four (4) representatives; and, Walker County, with a population of 54,211, would be assigned two representatives. Under another proposal representation for Montgomery County would be increased to five (5) and that of Walker County would be reduced to one (1).

First you compute the number of persons each representative would represent, and compare the percentage difference under each proposal as shown in Table A.

[fol. 206]

TABLE A

County	Population	Proposal 1 R.	Proposal 1 No. Represented	Proposal 2 R.	Proposal 2 No. Represented
Montgomery	169,302	4	42,302	5	33,842
Walker	54,211	2	27,105	1	54,211
Percentage Disparity			55%		60%

Under Table A, since the ratio of 27,105 to 42,302 is 1.55, while the ratio of 33,842 to 54,211 is 1.60, it is apparent that the percentage disparity increases from 55% to 60%, rather than decreases, and that the transfer should not be made.

Test #2. *Percentage difference between individual shares.* An alternative test under the method of Equal Proportions would make a proposed transfer of a representative's seat from one county to another if, and only if, the percentage difference between the individual shares of citizens in the two counties would be reduced by the transfer. "An individual share" is computed by dividing the population of the county into the number of representatives proposed. This computation, using the same example, is illustrated by Table B.

TABLE B

County	Population	Proposal 1 R.	Proposal 1 Individual Share	Proposal 2 R.	Proposal 2 Individual Share
Montgomery	169,302	4	.000024	5	.000029
Walker	54,211	2	.000037	1	.000018
Percentage Disparity			54%		61%

[fol. 207] Since the ratio of 24 to 37 is 1.54 and that of 18 to 29 is 1.61, it is clear that under the second test the transfer should not be made.

II. Major Fractions Method

This method is based upon a comparison of the absolute difference between the individual shares of representation

of the persons represented in the Legislature. The method is based upon the absolute difference in these individual shares and not upon the relative difference. The overall results are shown in Table II to this brief.

Under this method the test of a proposed transfer of a seat from one county to another is:

> Test: A proposed transfer of a seat in the Legislature from one county to another would be made if, and only if, the absolute difference between the individual shares in the two counties would be reduced by the transfer.

This method can also be used to test the example with respect to Montgomery and Walker counties. The decrease in the equality between individual shares results in the acceptance, under this method, of the Proposal 2.

TABLE C

County	Population	Proposal 1 R.	Proposal 1 Individual Share	Proposal 2 R.	Proposal 2 Individual Share
Montgomery	169,302	4	.000024	5	.000029
Walker	54,211	2	.000037	1	.000018
Absolute Inequality			.000013		.000011

[fol. 208] Summary: The method of Major Fractions is a method which equalizes, as far as possible, the individual shares representation of the persons in various counties on the basis of absolute differences. The method makes no attempt to equalize individual shares on the basis of relative differences; and, it makes no attempt to equalize the number of persons represented by an individual legislator.

III. Harmonic Means Method

The method of Harmonic Means endeavors to equalize the representation of the various counties in so far as possible on the basis of the absolute, rather than the relative, difference in the number of persons represented by an individual legislator.

Proposed transfers under any reapportionment proposal can be judged for soundness by the application of the following test:

> Test: A transfer should be made from one county to another if, and only if, the absolute difference between the number of persons represented by the representatives from the two counties would be reduced by the transfer.

This method can again be demonstrated by the example used before with respect to Montgomery and Walker counties.
[fol. 209]

TABLE C

County	Population	R.	Proposal 1 No. Represented	R.	Proposal 2 No. Represented
Montgomery	169,302	4	42,302	5	33,842
Walker	54,211	2	27,105	1	54,211
	Absolute Inequality		15,197		21,369

Since the absolute inequality between the number of persons represented by an individual legislator is increased rather than decreased by the second proposal, it would be improper under this method to take a representative from Walker County and award it to Montgomery.

Summary: The method of Harmonic Means is a method which equalizes, as far as possible, the number of persons represented by an individual legislator by comparing the absolute difference between the legislators assigned to various counties. The method makes no attempt to equalize on the basis of the relative differences between the number of persons represented by an individual legislator, or to equalize the "individual shares" of the persons represented.

IV. The Methods of Smallest Divisors and Greatest Divisors

The methods of Greatest Divisors and Smallest Divisors are arbitrary methods which make no attempt to equalize either the number of persons represented by a legislator,

or the percentage of representation which the individual citizen has in the Legislature. The former is shown by Table IV. The latter can be worked from the same table. [fol. 210] The results of both are shown by Table IV.

Under the method of Smallest Divisors the legislative seat is transferred from one county to another if the absolute surplus of the two counties is reduced thereby.

Under the Greatest Divisor method transfer is made if the absolute deficiency would be reduced thereby.

In theoretically perfect apportionment no county would have either a surplus or a deficiency. These methods, although workable, do not take into consideration the relative size of the counties being compared in connection with the deficiency or the surplus.

The method of Smallest Divisors has a very strong bias in favor of small counties; the method of Greatest Divisors has a very strong bias in favor of large counties.

V. Selection of the Best Method

There is little difficulty in determining upon a method to be used computing reapportionment if the objective is known.

If the objective is simply to select the method that most favors small counties, the method of Smallest Divisors is the choice. If the objective is to show bias in favor of large counties, the method of Greatest Divisors should be adopted. If the objective is to equalize the number of persons represented by an individual legislator as nearly as may be [fol. 211] among the counties, the choice is between the method of Harmonic Means and the method of Equal Proportions. If the objective is to equalize the individual shares of the persons represented in the counties, then the choice must be between the method of Major Fractions and Equal Proportions. If the desire is to equalize as nearly as can be both the number of persons represented by an individual legislator and the individual shares of the persons residing in the several counties, then the method of Equal Proportions is the only method to be adopted.

In Alabama, under the 1960 census, the methods of Equal Proportions and Harmonic Means produce the same result.

The method of Major Fractions is also identical except for the assignment to Montgomery County of an additional member at the expense of Walker County.

VI. Other Mathematical Methods of Apportionment

Excluding purely arbitrary bracket methods, such as that employed by the Legislature of Alabama, several other mathematical methods have been recognized from time to time.

For many years reapportionments of Congress and state legislatures were based upon methods involving fixed ratios. Basic computations involved the discovery of the size of the absolute or perfect representational district. However, since no district would ever be perfect the problem always [fol. 212] involved the treatment of resulting fractions. Five basic methods of treating fractions were developed:

1. Included Fractions—Any fraction results in the awarding of a whole representative.

2. Rejected Fractions—No fractions are recognized; all fractions are discarded in making computations.

3. Harmonic Fractions—All fractions above the harmonic mean awarded a representative; those below the harmonic mean are not. The harmonic mean is determined by dividing the sum of the whole digit below and above by twice their product.

4. Geometric Fractions—All fractions above the geometric mean are awarded a representative; those below the geometric mean are denied a representative. The geometric mean is determined by taking the square root of the sum of the whole digit below and the whole digit above the number under consideration.

5. Major Fractions—All fractions above half are awarded a representative; all below one-half are denied a representative.

None of these methods will apply to a fixed size body. And all involve population paradoxes. For example, it [fol. 213] was found that in all of these methods an in-

crease in population might result in a reduction of the size of the legislative body.

From 1850 to 1910 the United States Congress used the method known as the Vinton method. This method worked as follows:

1. Divide the total population by the desired number of seats to get the "true ratio".
2. Divide the population of each state by the "true ratio" to get the "exact quota".
3. Assign a seat to each state with an "exact quota" of less than one.
4. Assign each state the number of seats shown by the whole number portion of the "exact quota".
5. Assign additional seats to states in order of the size of their fractions.

The Vinton method is not workable with respect to the Legislature the size of the State of Alabama. After one goes through step 4, he is already assigned 110 members of a Legislature that only has 106 members.

It is interesting to note that the Vinton method also proved undesirable in the case of Congress. The method is subject to what is known as the "Alabama Paradox." Even though the House of Representatives were increased in size, a state might, because of this increase in the size alone, lose representation although there were actually more representatives available for distribution among the states. It is even subject to what has been called the "Super Alabama [fol. 214] Paradox": a state may lose representation in the House because of an increase in the size of the House even though that state has increased in population.

Many other methods have been proposed and utilized from time to time based on various types of ratio arranged tests. However, each of these have been found subject to one or more of the population paradoxes and, therefore, have been considered unsatisfactory by those who have subjected them to careful study.

TABLE I - PRIORITY LIST AND ORDER OF ASSIGNMENTS UNDER METHOD OF EQUAL PROPORTIONS

County	Population	Priority Numbers - 0.70710678 2nd Member		0.40824829 3rd Memb.		0.28867513 4th Memb.		0.22360680 5th Memb.	
Jefferson	634,864	(1)	448,917	(2)	259,182	(4)	183,269	(5)	141,960
Mobile	314,301	(3)	222,244	(6)	128,313	(10)	90,731	(15)	70,280
Montgomery	169,210	(7)	119,650	(16)	69,080	(24)	48,847		37,837
Madison	117,348	(12)	82,978	(26)	47,907		33,875		26,240
Tuscaloosa	109,047	(13)	77,108	(29)	44,518		31,479		
Etowah	96,980	(17)	68,575	(36)	39,592				
Calhoun	95,878	(18)	67,796	(37)	39,142				
Talladega	65,495	(28)	46,312		26,738				
Lauderdale	61,622	(31)	43,573						
Morgan	60,454	(32)	42,747						
Dallas	56,667	(35)	40,070						
Walker	54,211	(39)	38,333						
Houston	50,718		35,863						
Lee	49,754		35,181						
Baldwin	49,088		34,710						
Marshall	48,018		33,954						
Colbert	46,506		32,885						
Russell	46,351		32,775						
Cullman	45,572		32,224						
DeKalb	41,417		29,286						

[fol. 215]

Population Multiplied By											
0.18257419 6th Memb.		0.15430335 7th Memb.		0.13363062 8th Memb.		0.11785113 9th Memb.		0.1 10th	
(8) 115,910	(9)	97,962	(11)	84,837	(14)	74,819	(19)		
(21) 57,383	(25)	48,498	(33)	42,000		37,041			
30,893									

Note 1.

Computation of Equal Proportions Priority List.

The priority list for the method of Equal Proportions obtained by dividing the population of each county by the geomet means of the successive numbers of representatives. After each county is assigned one representative, a county's priority posit for the assignment of a second representative is determined by dividing the population of the county by the geometric mean betw 1 and 2. Such geometric mean would be obtained by multiplying 1 2 and extracting the square root of the product; result, 1.4142 To determine a county's priority for the assignment of a third representative, its population would be divided by the geometric mean between 2 and 3; for a fourth, divide by the geometric mean between 3 and 4; etc. To simplify computation, these divisors a converted into equivalent multipliers by dividing each into the number 1 to secure the reciprocal of each. For example the reci cal of 1.4142136 is 0.70710678.

Note 2.

Use of Priority List.

The priority list can be used for any size legislativ body. With 106 members, after the geographical assignment of 6 members one to each county, the additional representatives are successively assigned on the basis of the priority numbers: the first to the county with the highest priority number; the second to the county with the next highest; etc., until all 39 have be assigned. The numbers in parenthesis show the order of assignme under this method.

Note 3.

For tables of multipliers and further explanations of computation and use of such priority lists see "A Survey of Meth of Apportionment in Congress," Edward V. Huntington, Department Mathematics, Harvard University, 76th Congress, Third Session, Senate Document No. 304. See also Shaw v. Atkins, 153 S.W.2d 4

SSIGNMENTS UNDER METHOD OF EQUAL PROPORTIONS

Priority Numbers - 0710678 Member		0.40824829 3rd Memb.		0.28867513 4th Memb.		0.22360680 5th Memb.
48,917	(2)	259,182	(4)	183,269	(5)	141,960
22,244	(6)	128,313	(10)	90,731	(15)	70,280
19,650	(16)	69,080	(24)	48,847		37,837
82,978	(26)	47,907		33,875		26,240
77,108	(29)	44,518		31,479		
68,575	(36)	39,592				
67,796	(37)	39,142				
46,312		26,738				
43,573						
42,747						
40,070						
38,333						
35,863						
35,181						
34,710						
33,954						
32,885						
32,775						
32,224						
29,286						

[fol. 215]

Population Multiplied By											
0.18257419 6th Memb.		0.15430335 7th Memb.		0.13363062 8th Memb.		0.11785113 9th Memb.		0.10540926 10th Memb.		0.09534626 11th Memb.	
(8) 115,910	(9)	97,962	(11)	84,837	(14)	74,819	(19)	66,921	(20)	60,532	
(21) 57,383	(25)	48,498	(33)	42,000		37,041		33,130		29,967	
30,893											

Note 1.

Computation of Equal Proportions Priority List.

The priority list for the method of Equal Proportions is obtained by dividing the population of each county by the geometric means of the successive numbers of representatives. After each county is assigned one representative, a county's priority position for the assignment of a second representative is determined by dividing the population of the county by the geometric mean between 1 and 2. Such geometric mean would be obtained by multiplying 1 by 2 and extracting the square root of the product; result, 1.4142136. To determine a county's priority for the assignment of a third representative, its population would be divided by the geometric mean between 2 and 3; for a fourth, divide by the geometric mean between 3 and 4; etc. To simplify computation, these divisors are converted into equivalent multipliers by dividing each into the number 1 to secure the reciprocal of each. For example the reciprocal of 1.4142136 is 0.70710678.

Note 2.

Use of Priority List.

The priority list can be used for any size legislative body. With 106 members, after the geographical assignment of 67 members one to each county, the additional representatives are successively assigned on the basis of the priority numbers: the first to the county with the highest priority number; the second to the county with the next highest; etc., until all 39 have been assigned. The numbers in parenthesis show the order of assignment under this method.

Note 3.

For tables of multipliers and further explanations of the computation and use of such priority lists see "A Survey of Methods of Apportionment in Congress," Edward V. Huntington, Department of Mathematics, Harvard University, 76th Congress, Third Session, Senate Document No. 304. See also Shaw v. Atkins, 153 S.W.2d 415 (1941).

Jefferson Extended	
0.08703883 - 12th Memb.	
(22) 55,258	
0.08006408 - 13th Memb.	
(23) 50,830	
0.07412493 - 14th Memb.	
(27) 47,059	
0.06900656 - 15th Memb.	
(30) 43,810	
0.06454972 - 16th Memb.	
(34) 40,980	
0.06065391 - 17th Memb.	
(38) 38,494	
0.05716620 - 18th Memb.	
36,293	
0.05407381 - 19th Memb.	
34,330	
0.05129892 - 20th Memb.	
32,568	
0.04879500 - 21st Memb.	
30,978	

TABLE V—DISTRIBUTION OF REPRESENTATIVES UNDER VARIOUS STANDARD STATISTICAL METHODS

	County	POPULATION	PERCENT OF POPULATION	PRESENT	EP/HM	MF	SD	GD
1	Jefferson	634,864	.1943	7	17	17	14	20
2	Mobile	314,301	.0962	3	8	8	7	9
3	Montgomery	169,210	.0518	4	4	5	4	5
4	Madison	117,348	.0359	2	3	3	3	3
5	Tuscaloosa	109,047	.0334	2	3	3	3	3
6	Etowah	96,980	.0297	2	3	3	3	3
7	Calhoun	95,878	.0293	2	3	3	3	3
8	Talladega	65,495	.0200	2	2	2	2	2
9	Lauderdale	61,622	.0189	2	2	2	2	1
10	Morgan	60,454	.0185	2	2	2	2	1
11	Dallas	56,667	.0173	3	2	2	2	1
12	Walker	54,211	.0166	2	2	1	2	1
13	Houston	50,718	.0155	1	1	1	2	1
14	Lee	49,754	.0152	2	1	1	2	1
15	Baldwin	49,088	.0150	1	1	1	2	1
16	Marshall	48,018	.0147	1	1	1	2	1
17	Colbert	46,506	.0142	1	1	1	1	1
18	Russell	46,351	.0142	2	1	1	1	1
19	Cullman	45,572	.0140	1	1	1	1	1
20	DeKalb	41,417	.0127	1	1	1	1	1
21	Chambers	37,828	.0116	2	1	1	1	1
22	Jackson	36,681	.0112	2	1	1	1	1
25	Tallapoosa	35,007	.0107	2	1	1	1	1
30	Elmore	30,524	.0093	2	1	1	1	1
31	Marengo	27,098	.0083	2	1	1	1	1
33	Pike	25,987	.0080	2	1	1	1	1
34	Clarke	25,738	.0079	2	1	1	1	1
38	Barbour	24,700	.0076	2	1	1	1	1
39	Butler	24,560	.0075	2	1	1	1	1
46	Sumter	20,041	.0061	2	1	1	1	1
47	Hale	19,537	.0060	2	1	1	1	1
50	Wilcox	18,739	.0057	2	1	1	1	1
53	Perry	17,358	.0053	2	1	1	1	1
56	Lowndes	15,417	.0047	2	1	1	1	1
58	Henry	15,286	.0047	2	1	1	1	1
64	Bullock	13,462	.0041	2	1	1	1	1

1. Counties listed in order of size with counties having only 1 representative at present and receiving no additional representative under any statistical method omitted below the 22nd ranked county by population.

2. With 106 members one representative holds a .0094 share of the legislative power in the House. Perfect district = 30,818.

3. Abbreviations use: EP = Equal Proportions; HM= Harmonic Means; MF = Major Fractions; SD = Smallest Divisors; GD = Greatest Divisors.

DISTRICT	POPULATION	VARIATION[1]
(Under Represented)		
Jefferson	634,864	+541,529
Mobile	314,301	+220,966
Montgomery	169,210	+ 75,875
Etowah St. Clair	122,368	+ 29,033
Madison *	117,348	+ 24,013
Tuscaloosa *	109,047	+ 15,712
Baldwin Escambia Monroe	104,971	+ 11,636
Lauderdale Limestone	98,135	+ 4,800
Lee Russell *	96,105	+ 2,770
Calhoun *	95,878	+ 2,543
(Over-Represented)		
Colbert Franklin * Marion	90,331	- 3,004
Blount Cullman Winston	85,879	- 7,456
Lawrence Morgan	84,955	- 8,380
Jackson Marshall	84,699	- 8,636
Fayette Lamar Walker	84,630	- 8,705
Butler		

DISTRICT	POPULATION	VARIATION[1]
Coffee Crenshaw Pike	70,479	-22,856
Henry Houston	66,004	-27,331
Tallapoosa Elmore	65,531	-27,804
Talladega	65,495	-27,840
Choctaw Clarke Washington	59,180	-34,155
Cherokee DeKalb	57,720	-35,615
Chambers Randolph	57,305	-36,030
Dallas	56,667	-36,668
Dale Geneva	53,376	-39,959
Pickens Sumter	41,923	-41,412
Bullock Macon	40,179	-53,156
Clay Cleburne Coosa	34,037	-59,298
Greene Hale	33,137	-60,198
Bibb Perry	31,715	-61,620
Marengo	27,098	-66,237
Barbour	24,700	-68,635

[fol. 220]

TABLE VI—PRESENT S
POPULATI

TABLE VI—PRESENT SENATE DISTRICTS SHOWING POPULATION VARIATIONS

Madison *	117,348	+ 24,013
Tuscaloosa *	109,047	+ 15,712
Baldwin Escambia Monroe	104,971	+ 11,636
Lauderdale Limestone	98,135	+ 4,800
Lee Russell *	96,105	+ 2,770
Calhoun *	95,878	+ 2,543
(Over-Represented)		
Colbert Franklin * Marion	90,331	- 3,004
Blount Cullman Winston	85,879	- 7,456
Lawrence Morgan	84,955	- 8,380
Jackson Marshall	84,699	- 8,636
Fayette Lamar Walker	84,630	- 8,705
Butler Conecuh Covington	77,953	- 15,382
Autauga Chilton Shelby	76,564	- 16,771
Elmore	65,531	-27,804
Talladega	65,495	-27,840
Choctaw Clarke Washington	59,180	-34,155
Cherokee DeKalb	57,720	-35,615
Chambers Randolph	57,305	-36,030
Dallas	56,667	-36,668
Dale Geneva	53,376	-39,959
Pickens Sumter	41,923	-41,412
Bullock Macon	40,179	-53,156
Clay Cleburne Coosa	34,037	-59,298
Greene Hale	33,137	-60,198
Bibb Perry	31,715	-61,620
Marengo	27,098	-66,237
Barbour	24,700	-68,635
Wilcox	18,739	-74,596
Lowndes	15,417	-77,918

1/ Variation form Perfect District of 93,335.
* Districts not altered by most nearly perfect reapportionment.

DISTRICT	POPULATION	VARIATION
(Under-Represented)		
Madison *	117,348	+24,013
Tuscaloosa *	109,047	+15,712
Mobile #1 *	104,767	+11,435
Mobile #2	104,767	+11,435
Mobile #3	104,767	+11,435
Etowah	96,980	+ 3,645
Limestone Morgan	96,967	+ 3,632
Lee Russell *	96,105	+ 2,770
Calhoun *	95,878	+ 2,543
Dale, Henry Houston	97,070	+ 2,415
Jackson, DeKalb Cherokee	94,401	+ 1,066
Blount, Coosa St. Clair Shelby	93,695	+ 360
Marshall Cullman	93,590	+ 255
(Over-Represented)		
Randolph Chambers Tallapoosa	92,302	- 1,034
Crenshaw, Butler Conecuh Escambia	90,742	- 2,593
Jefferson #1 *	90,695	- 2,640
Jefferson #2	90,695	- 2,640
Jefferson #3	90,695	-2,640
Jefferson #4	90,695	-2,640
Jefferson #5	90,695	-2,640
Jefferson #6	90,695	-2,640
Jefferson #7	90,695	-2,640
Colbert, Marion Franklin *	90,331	-3,004
Macon, Pike Bullock Barbour	90,266	-3,099
Marengo, Clarke Choctaw, Wilcox	89,445	-3,890
Dallas, Perry Lowndes	89,422	-3,913
Lamar, Sumter Pickens, Hale Greene	89,331	-4,004
Chilton, Bibb Autauga Elmore	89,313	-4,022
Clay, Cleburne Talladega	88,806	-4,529
Coffee, Geneva Covington	88,524	-4,811
Baldwin, Monroe Washington	86,832	-6,503
Lauderdale Lawrence	86,123	-7,202
Winston, Walker Fayette	85,217	-8,118
Montgomery #1*	84,605	-8,125
Montgomery #2	84,605	-8,125

TABLE VII—MOST NEARLY PERFECT REAPPORTIONMENT OF THE SENATE

Etowah	96,980	+ 3,645	Franklin *	90,331	-3,004
Limestone Morgan	96,967	+ 3,632	Macon, Pike Bullock Barbour	90,266	-3,099
Lee Russell *	96,105	+ 2,770	Marengo, Clarke Choctaw, Wilcox	89,445	-3,890
Calhoun *	95,878	+ 2,543			
Dale, Henry Houston	97,070	+ 2,415	Dallas, Perry Lowndes	89,422	-3,913
Jackson, DeKalb Cherokee	94,401	+ 1,066	Lamar, Sumter Pickens, Hale Greene	89,331	-4,004
Blount, Coosa St. Clair Shelby	93,695	+ 360	Chilton, Bibb Autauga Elmore	89,313	-4,022
Marshall Cullman	93,590	+ 255	Clay, Cleburne Talladega	88,806	-4,529
(Over-Represented)			Coffee, Geneva Covington	88,524	-4,811
Randolph Chambers Tallapoosa	92,302	- 1,034	Baldwin, Monroe Washington	86,832	-6,503
Crenshaw, Butler Conecuh Escambia	90,742	- 2,593	Lauderdale Lawrence	86,123	-7,202
Jefferson #1 *	90,695	- 2,640	Winston, Walker Fayette	85,217	-8,118
Jefferson #2	90,695	- 2,640	Montgomery #1*	84,605	-8,125
			Montgomery #2	84,605	-8,125

1/ Variation from perfect District of 93,335.

*Present District.

[fol. 225]

TABLE X—SENATE DISTRICTS UNDER BILL SHOWING POPULATION

DISTRICTS	POPULATION	VARIATION[1]	DISTRICT	POPULATION	VARIATION[1]
(Under Represented)					
Jefferson	634,864	+541,529	Lowndes * Dallas	72,084	- 21,251
Mobile	314,301	+220,966	Fayette * Walker	70,359	- 22,976
Montgomery	169,210	+ 75,875			
Madison	117,348	+ 24,013	Henry Houston	66,004	- 27,331
Tuscaloosa	109,047	+ 15,712	Tallapoosa Elmore	65,531	- 27,804
Baldwin Escambia	82,599	- 10,736	Talladega	65,495	- 27,840
Lauderdale Limestone	98,135	+ 4,800	Cullman * Winston	60,430	- 32,498
Etowah *	96,980	+ 3,645	Choctaw Clarke Washington	59,180	- 34,155
Lee Russell	96,105	+ 2,770	Cherokee DeKalb	57,720	- 35,615
Calhoun	95,878	+ 2,543	Chambers Randolph	57,305	- 36,030
(Over Represented)			Dale Geneva	53,376	- 39,959
Colbert			St. Clair * Blount	50,837	- 42,496
Franklin Marion	90,331	- 3,004	Barbour * Pike	50,687	- 42,648
Lawrence			Marengo * Sumter	47,139	- 46,196
Morgan	84,955	- 8,380	Coffee * Crenshaw	45,492	- 47,843
Jackson Marshall	84,699	- 8,636	Wilcox * Monroe	41,111	- 52,224
Butler			Pickens * Lamar	36,153	- 56,182
Conecuh Covington	77,953	- 15,382	Bullock Macon	40,179	- 53,156
Autauga			Clay Cleburne Coosa	34,037	- 59,298

TABLE X—SENATE DISTRICTS PROVIDED IN CRAWFORD-WEBB BILL SHOWING POPULATION VARIATIONS

Baldwin Escambia	82,599	- 10,736	Elmore	65,531	- 27,804
			Talladega	65,495	- 27,840
Lauderdale Limestone	98,135	+ 4,800	Cullman * Winston	60,430	- 32,498
Etowah *	96,980	+ 3,645	Choctaw Clarke Washington	59,180	- 34,155
Lee Russell	96,105	+ 2,770	Cherokee DeKalb	57,720	- 35,615
Calhoun	95,878	+ 2,543	Chambers Randolph	57,305	- 36,030
(Over Represented)			Dale Geneva	53,376	- 39,959
Colbert Franklin Marion	90,331	- 3,004	St. Clair * Blount	50,837	- 42,496
			Barbour * Pike	50,687	- 42,648
Lawrence Morgan	84,955	- 8,380	Marengo * Sumter	47,139	- 46,196
			Coffee * Crenshaw	45,492	- 47,843
Jackson Marshall	84,699	- 8,636	Wilcox * Monroe	41,111	- 52,224
			Pickens * Lamar	36,153	- 56,182
Butler Conecuh Covington	77,953	- 15,382	Bullock Macon	40,179	- 53,156
			Clay Cleburne Coosa	34,037	- 59,298
Autauga Chilton Shelby	76,564	- 16,771	Greene Hale	33,137	- 60,198
			Bibb Perry	31,715	- 61,620

1. Variation from Perfect District of 93,335.
* New districts created by this Act.

[fol. 230]

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

NORTHERN DIVISION

[Title omitted]

Excerpts From Testimony

Before:

Hon. Richard T. Rives, United States Circuit Judge;

Hon. Daniel H. Thomas, United States District Judge; and

Hon. Frank M. Johnson, Jr., United States District Judge;

At Montgomery, Alabama, July 16, 1962.

[fol. 231]

APPEARANCES:

For the Plaintiffs:

Charles Morgan, Jr., George Peach Taylor, and George W. Dean, Jr.

For R. E. Farr, Marshal Meadows, Jack Hopping, Jack Ryan, Max W. Morgan:

Cooper, Mitch and Crawford (Jerome A. Cooper and William Mitch).

For David J. Vann, Robert S. Vance, Richard P. Humphrey, Jr.:

David J. Vann and Robert S. Vance.

For John W. McConnell, Jr., Joseph N. Langan, William M. Williams, Jr., Garet Van Antwerp:

John W. McConnell, Jr.

For Harrell Hammonds:

Boswell and Smith (E. C. Boswell and Jack W. Smith).

For Sam Engelhardt and H. G. Rains:
Roy D. McCord and H. G. Rains.

For MacDonald Gallion and Bettye Frink:
Gordon Madison and Douglas S. Webb.

As Legal Advisor to Governor:
Robert P. Bradley.

As Amicus Curiae:
C. D. Sands.

(The above case coming on for hearing at Montgomery, Alabama, July 16, 1962, before the above-constituted court, the following proceedings were had:)

* * * * * * *

[fol. 239] Judge Rives: Call now the case of M. O. Sims and others against Bettye Frink, Secretary of State, on the motion for interlocutory injunction, and call on the plaintiffs to introduce such evidence as they care to introduce.

OFFERS IN EVIDENCE

Mr. Morgan: May it please the Court, first we would offer into evidence all sworn pleadings and affidavits on behalf of plaintiffs and intervenors in this cause. Secondly, we would request that the—a certified copy of Senate Bill 29 marked Plaintiff's Exhibit A be marked by the reporter.

The Clerk: Plaintiff's Exhibit number 1.

Mr. Morgan: Plaintiff's Exhibit number 1. And that a certified copy of House Bill 59 be marked Plaintiff's Exhibit number 2.

The Clerk: Plaintiff's Exhibit number 2.

Judge Rives: Hand them to the Clerk.

Mr. Morgan: Yes, sir.

The Clerk: Number 1?

Mr. Morgan: Number 1 is right on top.

[fol. 240] Judge Thomas: What is number 1?

Mr. Morgan: Number 1 is Senate Bill 29; number 2 is House Bill 59. We at this time offer into a—evidence a bound copy of the 1962 Senate as—census as Plaintiff's Exhibit 3.

The Clerk: Plaintiff's Exhibit number 3.

Judge Rives: Without objection to it, each of those will be received in evidence. I suppose there is no objection to any of them. If you gentlemen have any objections, make them at the time he offers them. Without objection each of these Exhibits is received in evidence.

* * * * * * *

[fol. 241] Oakley Melton, Jr., witness for the Plaintiffs, having been duly sworn, testified as follows:

Direct examination.

By Mr. Morgan:

Q. Question to the witness; what is your name?

A. Oakley Melton, Jr.

Q. Mr. Melton, what is your title?

A. I am the Clerk of the Alabama House of Representatives.

[fol. 242] Q. Mr. Melton, do you have in your hand a document or a group of documents—what do you hold there, sir?

A. My subpoena calls for me to bring copies of all reapportionment bills which were introduced in the Alabama House of Representatives in the recent special session, and I have copies of such bills.

Q. Are they marked, Mr. Melton?

A. Yes, sir. They are marked E-1 through E-28; that is designation I put on them out in the hall. The official bill number and the authors of the bill appear at the top of each, each copy of each bill.

Q. Are those true and correct copies of each bill introduced in the special session of the Alabama Legislature—

A. In the House.

Q. —1962?

A. In the House.

Q. In the House of Representatives?

A. Yes, sir; yes, sir.

Offer in Evidence.

Mr. Morgan: We offer these bills as Exhibit for the plaintiffs number 5, 1 through 28.

Judge Rives: Those are all of the reapportionment bills—

Mr. Morgan: Yes, sir; every reapportionment bill—

Judge Rives: —considered in the House of Representatives?

[fol. 243] Mr. Morgan: In the House of Representatives, introduced in the the House of Representatives at the special session.

Judge Rives: I presume you make the same objection.

Mr. Madison: Same objection, your honor.

Judge Rives: It will be the same ruling; we will overrule the objection.

Q. Mr. Melton, I want to ask you one question at this time; as Clerk of the House of Representatives of the Legislature of Alabama, what is your—what are your duties?

A. We have charge of all the clerical records, the preparing of the Journals, the processing of the Acts, the processing of the bills, work with all the employees of the House, prepare the final Acts, write the Journals, and chief clerical officer, I guess would be a good way to summarize my duties.

Q. And custody and control of these records comes within the purview of your official duties as Clerk of the House of Representatives?

A. Yes, sir; I maintain custody and control of the records.

Q. Mr. Melton, do you have a copy of what I term the Special Primary Law?

A. Here is a copy of House Bill 130 as finally passed by the Legislature.

Q. Has that bill been signed as yet by the Governor, or do you know, sir?

A. My information is that it has not yet been signed, [fol. 244] has not yet been acted on by the Governor.

Q. Is the copy which you hold in your hand a true and correct copy of House Bill 130, introduced into and passed by the Alabama House of Representatives at a special session, 1962?

A. No, sir; this is not a copy of it as originally introduced; this is a copy of it as finally passed by the—both houses.

Q. That will be fine—as passed?
A. Yes, sir.

* * * * * * *

[fol. 247] RALPH EAGERTON, JR., witness for the Plaintiffs, having been duly sworn, testified as follows:

Direct examination.

By Mr. Taylor:

Q. State your name, please?
A. Ralph Eagerton, Jr.
Q. What is your occupation?
A. Revenue Research Analyst Two with the Alabama Department of Revenue.
[fol. 248] Q. How long have you been with the Department?
A. Sixteen years.
Q. Have you, Mr. Eagerton, made any studies of the revenue laws of the State of Alabama.
A. Yes, sir.
Q. More particularly, have you made studies of the amounts of monies collected from various taxes and deposited into the Alabama Special Educational Trust Fund?

OBJECTIONS TO TESTIMONY

Mr. Madison: Your honor, I would like to interpose an objection to this line of questioning, because I don't believe it is material to any of the issues in this case. It has not been disclosed either to the Court or to us wherein it is claimed that it is material, but seems we might be getting a little far afield.

Judge Rives: What is the materiality of this?

PLAINTIFF'S OFFER OF PROOF RE TESTIMONY AND COURT'S RULING THEREON

Mr. Taylor: May it please the Court, we would offer to show by this witness and by one other witness the discrimination against the plaintiffs individually and as a class, residents of Jefferson County, in the manner in which taxes

are levied, the monies received from taxpayers in Jefferson County, and the way that it is distributed, bearing on the question of plaintiffs' rights under the Fourteenth Amendment, and in particular the due process clause.

Judge Rives: On the theory that is a result of—of malapportionment of the Legislature?

Mr. Taylor: Yes, sir.

[fol. 249] (The Court conferred.)

Judge Rives: It is the present thinking of the Court that if there is in fact an invidious discrimination that prejudice is not necessary to be shown, and that would unduly prolong this trial to go into it, a showing of prejudice. We will sustain the objection to the evidence.

* * * * * * *

[fol. 355] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

NORTHERN DIVISION

[Title omitted]

ORDER OF SUBSTITUTION—July 18, 1962

It appearing to this Court that the defendant Sam Engelhardt has ceased to be Chairman of the Alabama State Democratic Executive Committee and that he has been succeeded in that office by Roy Mayhall; that C. O. Vardaman has ceased to be Chairman of the Alabama State Republican Executive Committee and that he has been succeeded in that office by John Grenier; and that O. P. Drake has ceased to be Secretary of the Alabama State Republican Executive [fol. 356] Committee and that he has been succeeded in that office by Perry O. Hooper, it is the opinion of this Court that, pursuant to the provisions of Rule 25(d), Federal Rules of Civil Procedure:

(1) The name "Roy Mayhall, Chairman of the Alabama State Democratic Executive Committee" be substituted for

"Sam Engelhardt, Chairman of the Alabama State Democratic Executive Committee";

(2) That the name "John Grenier, Chairman of the Alabama State Republican Executive Committee" be substituted for "C. O. Vardaman, Chairman of the Alabama State Republican Executive Committee"; and

(3) That the name "Perry O. Hooper, Secretary of the Alabama State Republican Executive Committee" be substituted for "O. P. Drake, Secretary of the Alabama State Republican Executive Committee," in all places where said names appear in the pleadings in this cause.

It is, therefore, the Order, Judgment and Decree of this Court that "Roy Mayhall, Chairman of the Alabama State Democratic Executive Committee" be substituted for "Sam Engelhardt, Chairman of the Alabama State Democratic Executive Committee" in this cause in each instance where said substitution is appropriate.

It is the further Order, Judgment and Decree of this Court that "John Grenier, Chairman of the Alabama State Republican Executive Committee" be substituted for "C. O. Vardaman, Chairman of the Alabama State Republican Executive Committee" in this cause in each instance where said substitution is appropriate.

It is the further Order, Judgment and Decree of this Court that "Perry O. Hooper, Secretary of the Alabama State Republican Executive Committee" be substituted for "O. P. Drake, Secretary of the Alabama State Republican Executive Committee" in this cause in each instance where said substitution is appropriate.

Done, this the 18th day of July, 1962.

Richard T. Rives, United States Circuit Judge,
Daniel H. Thomas, United States District Judge,
Frank M. Johnson, Jr., United States District Judge.

[fol. 357] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION
Civil Action No. 1744-N

M. O. SIMS, FRED A. BEAM, WYLIE JOHNSON, G. R. SOUTHARD, MILES S. LEE, PAUL FRIEDMAN, WILLIAM LINDSAY WILLIAMS, WILLIAM P. SHAW, JR., PRENTICE W. THOMAS, RICHARD D. TANNEHILL, PAUL M. BYRNE, DAVID R. BAKER, CHARLES MORGAN, JR., and GEORGE PEACH TAYLOR, for themselves jointly and severally, and for all others similarly situated, Plaintiffs,

R. E. FARR, MARSHALL MEADOWS, JACK HOPPING, JACK RYAN, MAX W. MORGAN, DAVID J. VANN, ROBERT S. VANCE, RICHARD P. HUMPHREY, JR., JOHN W. McCONNELL, JR., JOSEPH N. LANGAN, WILLIAM M. WILLIAMS, JR., and GARET VAN ANTWERP, Intervening Plaintiffs,

vs.

BETTYE FRINK, Secretary of State of the State of Alabama; HARRELL HAMMONDS, Judge of Probate of Lowndes County, Alabama; JOHN A. SANKEY, Judge of Probate of Montgomery County, Alabama; J. PAUL MEEKS, Judge of Probate of Jefferson County, Alabama; JOHN GRENIER, Chairman of the Alabama State Republican Executive Committee; PERRY O. HOOPER, Secretary of the Alabama State Republican Executive Committee; ROY MAYHALL, Chairman of the Alabama State Democratic Executive Committee; H. G. RAINS, Secretary of the Alabama State Democratic Executive Committee; MACDONALD GALLION, Attorney General of the State of Alabama, Defendants.

OPINION—July 21, 1962

Rives, Circuit Judge, and Thomas and Johnson, District Judges.

Plaintiffs and the plaintiff-intervenors, as citizens of the United States and of the State of Alabama, and as taxpayers and duly qualified and registered voters in said State and in the Counties of Jefferson and Mobile, jointly and severally bring this action in their own behalf and in [fol. 358] behalf of all other voters in the State of Alabama who are similarly situated. The defendant Bettye Frink is sued in her capacity as Secretary of State for the State of Alabama and as a State constitutional official, who is charged with certain duties and responsibilities concerning the election of members of the Alabama Legislature. The defendants Hammonds, Sankey and Meeks are the duly elected, qualified and acting probate judges of Lowndes, Montgomery and Jefferson Counties, respectively. They are sued in their official capacity as constitutional officers for the State of Alabama and as representatives of all the probate judges of Alabama, who are charged by law with performing and exercising certain duties and powers in connection with the nomination and election of members of the Alabama Legislature. The defendants Grenier and Mayhall are the duly elected, qualified and acting Chairmen of the Alabama State Republican Executive Committee and of the Alabama State Democratic Executive Committee, respectively. They are made defendants in their official capacity as Chairmen of the Executive Committees of said political parties, who are charged by law in the State of Alabama with performing certain duties and functions in connection with the selection, nomination and election of members of the Alabama Legislature. The defendants Hooper and Rains are the duly elected, qualified and acting Secretaries of the Alabama State Republican Executive Committee and the Alabama State Democratic Executive Committee, respectively. Each is sued in his official capacity as an officer of the political party as indicated and is charged by the law of Alabama with performing certain functions and duties in connection with the selection, nomination and election of the Alabama legislators. The defendant MacDonald Gallion is the duly elected, qualified and acting Attorney General of the State of Alabama, who is charged by the law of the State of Alabama with performing certain duties and functions in

connection with the nomination and election of members of the Alabama Legislature.

The plaintiffs[1] bring this action in their own behalf and in behalf of all registered and qualified voters similarly situated, for a declaration of their rights concerning the apportionment of representatives and senators among the counties of the State of Alabama and for such relief as may [fol. 359] be proper to assure them, and all other voters of the State of Alabama that are similarly situated, free and equal suffrage and equal protection of the laws which plaintiffs claim have been for many years denied them by the defendants and their predecessors in office. The plaintiffs say that this Court has jurisdiction of this cause and that they have a right to institute this cause under 17 Stat. at Large 13 and 16 Stat. at Large 144; 42 U. S. C. §§ 1983 and 1988, as follows:

> "§ *1983. Civil action for deprivation of rights* Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."
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> • • • • • • •
>
> "§ *1988. Proceedings in vindication of civil rights* The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, . . ."

The plaintiffs, as citizens of the United States and of the State of Alabama, base their claim that they are denied the equal protection of the law accorded them by the Four-

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[1] The term "plaintiffs" will be used throughout this opinion to include the original plaintiffs and all intervening plaintiffs.

teenth Amendment to the Constitution of the United States by virtue of the debasement of their votes, since the Legislature of the State of Alabama has failed and continues to fail to reapportion itself since 1900. Plaintiffs say that the failure of the Alabama Legislature to reapportion itself violates §§ 198, 199 and 200 of the Alabama Constitution of 1901.[2]

In our order of March 30, 1962, setting for hearing the application for interlocutory injunction we indicated our tentative but unanimous opinion that no injunction was required prior to the primary elections, then set for May, 1962, in order for citizens of the State represented by the plaintiffs in this case to be accorded any constitutional rights asserted in time for the exercise of such rights at the general election in November, 1962. In that order we [fol. 360] expressed the further view that there was time for the Legislature of Alabama to comply with its duty prescribed by the Constitution of 1901 of the State of Alabama, and that no action on the part of this Court which was not absolutely essential for the protection of any constitutional rights asserted in the complaint should be taken before the Legislature of Alabama had had a further reasonable but prompt opportunity to comply with its duty. The application for interlocutory injunction was assigned for hearing for April 14, 1962.

On that date we reiterated the same views in continuing the application for interlocutory injunction and resetting it for hearing on July 16, 1962. In that order, for the guidance of counsel and for such aid as we might be, we made certain additional remarks to which we now adhere, as follows:

> "We remain of the same opinion that was expressed in the order setting the application for hearing, viz: until the Legislature has had a further reasonable but prompt opportunity to comply with its duty under Sections 199 and 200 of the Constitution of Alabama, this Court should take no action not absolutely essential for the protection of the constitutional rights as-

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[2] See Appendix "A."

serted in the complaint; and no ruling before the primary elections of May 1962 appears essential.

"The application for interlocutory injunction pertains to the conduct of both the primary elections of May 1962 and the general election of November 1962. That application is therefore continued and re-set for hearing at 10 o'clock a. m. on Monday, July 16, 1962. The hearing cannot be set for a much later date because, if this Court is to act effectively, some action must be taken in ample time before the general election of November 1962.

"For the guidance of counsel and for such aid as we may be in solving the troublesome but important subject of this litigation, we make the following additional remarks:

"(1) Under the opinion of the Supreme Court of the United States in *Baker* v. *Carr*, No. 6, October Term, 1961, decided March 26, 1962, it seems clear to us that: (a) this Court has jurisdiction of the present action; (b) the complaint as amended states a justiciable cause of action; (c) the plaintiffs have standing to challenge the Alabama apportionment statutes.

"(2) We have no disposition to discourage the introduction of evidence by any party, and in the ordinary case our opinion as to whether the plaintiffs will be entitled to appropriate relief should await the intro- [fol. 361] duction of evidence. However, we take judicial notice of the same facts which are well known to the Justices of the Supreme Court of Alabama and to the people of this State, as expressed on two different occasions in opinions of the Justices.

> "'We judicially know that the population of the various counties of this state has changed during the years which have intervened since the Constitution of 1901 was adopted, so that the representation as provided in §§ 1 and 2 of Title 32, Code 1940, cannot be said to be on a population basis.'

Opinion of the Justices of the Supreme Court of Alabama, No. 117, August 14, 1950, 47 So. 2d 714, 717.

"'We know, and the people of this State know, that our Constitution says that it *shall* be the duty of the legislature to reapportion the legislature according to population after each decennial census and that this constitutional mandate of the Constitution of 1901 has never been complied with.'

Opinion of the Justices of the Supreme Court of Alabama, No. 148, July 11, 1955, 81 So. 2d 881, 887.

"(3) The controlling constitutional formula which runs throughout the Constitution of Alabama is thus expressed in the last sentence of Section 284 of said Constitution: 'Representation in the legislature shall be based upon population, and such basis of representation shall not be changed by constitutional amendments.' See also Sections 198 to 201, inclusive. If that formula is met, then there can be no valid objection under the equal protection clause or any other part of the Constitution of the United States, which is, of course, the supreme law of the land, binding alike on this Court and on the Legislature of Alabama (Article VI, Clauses 2 and 3 of the Constitution of the United States). It is necessary that any action taken by the Legislature comply with constitutional standards, and it is important that such standards be met not half-heartedly but fully, because once there has been a legislative reapportionment, unless it so completely fails to meet constitutional standards that it must be set aside by court order, it will not be subject to alteration until the next session of the Legislature after the decennial census in 1970 (Constitution of Alabama, Section 198).

"(4) In the event that the Legislature of Alabama complies with its duty before the next hearing, and this Court can so find, then no further action will be needed in this case and the case can be dismissed. If the Legislature does not act, or if its action does not meet constitutional standards, then we will be under a clear duty to take some action in time to take effect before the general election of November 1962. Such

action, however, should be held to the minimum that is necessary for the citizens of Alabama to be accorded their constitutional rights.

"(5) To that end, it is fair to advise the parties of our present thinking that we would then follow the plan suggested in the concurring opinion of Mr. Jus-
[fol. 362] tice Clark in *Baker* v. *Carr, supra*:

> "'One plan might be to start with the existing assembly districts, consolidate some of them, and award the seats thus released to those counties suffering the most egregious discrimination. Other possibilities are present and might be more effective. But the plan here suggested would at least release the strangle hold now on the Assembly and permit it to redistrict itself.'

"(6) While retaining jurisdiction, we could then defer further decision or action to afford the newly elected Legislature full opportunity to heed the constitutional mandate to reapportion. When that has been done the duty resting on us will be at an end and the case can be dismissed."

On July 12, 1962, an Extraordinary Session of the Legislature of Alabama passed a proposed constitutional amendment, commonly referred to as the "67-Senator Amendment,"[3] this proposed constitutional amendment being subject to the ratification of the voters of the State of Alabama in an election to be held in November, 1962. On the same date, the Governor of the State of Alabama signed into law the "Crawford-Webb Bill,"[4] as passed by the Alabama Legislature, which has been referred to as a "stand-by" legislative act to take effect in the event the voters of the State of Alabama refuse to ratify the proposed "67-Senator Amendment," or this Court refuses to

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[3] Officially known as Senate Bill 29 and attached hereto as Appendix "B."

[4] Officially known as House Bill 59 and attached hereto as Appendix "C."

accept said "67-Senator Amendment" as effective action that complies with federal constitutional requirements as laid down in *Baker* v. *Carr*, 369 U. S. 186. The final submission on the motion for interlocutory injunction was on July 16, 1962. This submission was upon the pleadings —a part of which were verified, the affidavits and exhibits thereto, the oral testimony and certain exhibits thereto, and the briefs and arguments of the parties.

It has been generally conceded throughout this litigation by all the parties that the present apportionment of both Houses of the Legislature of the State of Alabama constitutes "invidious discrimination" in violation of the Equal Protection Clause of the Fourteenth Amendment. The invidiousness of the situation is demonstrated by Appendix "D" to this opinion, this appendix listing each of the 67 counties in the State of Alabama, the population of each [fol. 363] county in 1901 when the Legislature was last reapportioned, the present population of each county, and the representatives authorized from each county to the Alabama House of Representatives; and by Appendix "E" listing the 35 senatorial districts, the population of each district in 1900 and the population of each district in 1960 —each senatorial district in Alabama being authorized one representative to the Senate.

Upon this submission, it becomes our duty: (1) to determine whether those Acts comply with constitutional standards and (2) in the event we are forced, however reluctantly, to find that they do not comply with the guaranty of the equal protection of the laws, then to decide what remedies are available to and should be utilized by this Court.

In proceeding to the performance of that duty we would make a few preliminary comments. It is not our function or desire to criticize the present or preceding legislatures for any failure to heed the clear mandate both of the Constitution of the United States and of the Constitution of Alabama. Nor would we criticize the Alabama courts for refusing to afford relief prior to *Scholle* v. *Hare*, 1962, 369 U. S. 429 (see *Waid* v. *Pool*, 225 Ala. 441, 51 So. 2d 869), or even since that decision (see *Ex parte Rice*, —— Ala. ——, May, 1962). However, in the light of the constitu-

tional principles announced in *Baker* v. *Carr, supra,* such failures on the parts of the legislative and judicial departments of the State have left the plaintiffs no alternative but to ask the federal courts to protect the constitutional rights of the citizens of Alabama.

Each of the cases which has arisen since *Baker* v. *Carr, supra,* has agreed that the test of compliance with the guaranty of the equal protection of the laws is whether the inequality in voting power is a result of "invidious discrimination." *Sanders* v. *Gray,* 203 F. Supp. 158 (April, 1962); *Toombs* v. *Fortson,* C. A. No. 7883, N. D. Ga., May 25, 1962; *Moss* v. *Burkart,* No. 9130, W. D. Okla., April 30, 1962 and June 19, 1962. In *Sanders* v. *Gray, supra,* Judge Bell considered the test rather fully, and arrived at the conclusion that the Supreme Court has now adopted the test urged by Mr. Justice Douglas in his dissenting opinion in *South* v. *Peters,* 1950, 339 U. S. 276, 281, that there shall [fol. 364] be no inequality in voting power by reason of invidious discrimination.[5]

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[5] In the course of that opinion the Justice had commented that, "The creation by law of favored groups of citizens and the grant to them of preferred political rights is the worst of all discriminations under a democratic system of government." 339 U. S. at 279. In like vein, Professor James E. Larson of the Bureau of Public Administration of the University of Alabama begins his recent work on "Reapportionment and the Courts" with such statements as:

"Any citizen, if asked, would in all probability admit to a sense of outrage at the suggestion that his vote be counted for less in the election of legislative representatives than the vote of any other citizen. The principle that a vote cast be counted of equal value to any other is so fundamental to our understanding of democracy as to pass unchallenged. Yet, in practice, the system of legislative representation in one American state after another shows a tenacious disregard for this rudimentary requirement of political equality."

and

"In a democracy, any action or condition which affects the right to vote is an important matter. It is puzzling, therefore, that unequal representation in the state legislature is not a subject to grip the interest and stir the emotions of the public. Aggrieved citizens no longer rise in force to march on state capitals with the complaint that lack of adequate representation is a cause of sufferings which are 'tedious and beyond the patience of a Job to endure.' Drift of taxing power to Washington, apathy, sophisti-

Judge Bell continued to formulate a test for invidiousness on a consideration of all relevant factors such as rationality or irrationality of state policy, whether or not the system is arbitrary, whether or not the system has a historical basis in our political institutions—federal or state, the presence or absence of political remedy, and the delicate relationship between the federal and state governments under the Constitution.

This Court has reached the conclusion that neither the "67-Senator Amendment," nor the "Crawford-Webb Act" meets the necessary constitutional requirements. We find that each of the legislative acts, when considered as a whole, is so obviously discriminatory, arbitrary and irrational that it becomes unnecessary to pursue a detailed development of each of the relevant factors of the test.

While it is true that this Court is not here primarily concerned with the constitutionality of any of the proposed action of the Legislature as measured by Alabama constitutional standards and requirements, this Court is here concerned with whether or not the Alabama Legislature, in [fol. 365] taking the action defendants now propose to this Court as "effective legislation," has complied with the constitutional standards required by the Constitution of the United States. In addition, this Court recognizes that there are State constitutional standards to be applied and failure to apply those State constitutional standards by this Court, after it has already taken jurisdiction in this case, will amount to a failure to recognize the principles laid down by the Supreme Court of the United States in *Louisville & Nashville Railroad Co.* v. *Garrett*, 231 U. S. 298, and followed in *Wofford Oil Co.* v. *Smith*, 263 F. 396.

The pertinent portion of §284 of the Constitution of Alabama is as follows:

> "... Representation in the legislature shall be based upon population, and such basis of representation shall not be changed by constitutional amendments."

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cation, and some cynicism about state government have made such displays out of place and in bad taste. Yet state legislatures today stand as a monumental denial of the principles to which we are committed."

This provision in §284 has never been considered by the courts of the State of Alabama in an adversary proceeding. This Court is informed that during the interval provided by this Court in its order of April 14, 1962, the Legislature refused to inquire of the Supreme Court of the State of Alabama whether this provision in the Constitution of the State of Alabama could be changed by constitutional amendment as the "67-Senator Amendment" proposes. This section of the Constitution of the State of Alabama has been treated, however, by several Justices of the Supreme Court of Alabama in nonadversary proceedings as follows:

(1) *In re Opinion of Justices*, No. 116, 47 So. 2d 713 (1950), where three of the present members of the Alabama Supreme Court, plus one member now deceased,[6] stated:

> "The official proceedings of the Constitutional Convention of 1901 (see Vol. 3, Official Proceedings, Constitutional Convention of 1901, pages 3906-3924) clearly disclose the purpose of the convention to withhold from the legislature the authority to propose amendments to the organic law which would effectively *change the basis of representation in the legislature*. Unquestionably, the above quoted provision of section 284, supra, withholds from the legislature the power and authority to initiate amendments to the Constitution which would have the effect of changing the basis of representation in the legislature to other than a population basis."

[fol. 366] (2) *Opinion of the Justices*, No. 148, 81 So. 2d 881 (1955), where four of the Alabama Supreme Court Justices, only two of whom are now on the Court,[7] stated:

> "Surely it is self evident that with the ultimate sovereignty residing in the people, they can legally and lawfully remove any provision from the Constitution which they previously put in or ratified, even to the

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[6] Justices Brown, Livingston, Lawson and Simpson.

[7] Justices Simpson, Stakely, Merrill and Mayfield.

extent of amending or repealing one of the sections comprising our Declaration of Rights, even though it is provided that they 'shall forever remain inviolate.'"

In the same opinion three of the Alabama Supreme Court Justices, all of whom are presently members of that Court,* stated:

"The only way that the people can amend or change the last sentence of Section 284, supra, is through a constitutional convention. It cannot be done by constitutional amendment."

The manifest uncertainty of the legality of the proposed constitutional amendment, as measured by State standards and as demonstrated by the above-quoted opinions of the Justices of the Supreme Court of Alabama, forces this Court to the conclusion that the Legislature may not have complied with the State Constitution in the passage of such an Act.

That portion of the proposed constitutional amendment providing a senator for each of the 67 counties of the State if approved by the voters would serve to make the discrimination in the Senate even more invidious than at present. Under the proposed amendment, senators elected by 20% of the State population could effectively block any proposed legislation, and senators elected by 14% of the population could prevent the submission of any future proposal to amend the Constitution of the State of Alabama. The present control of the Senate by members representing 25.1% of the people of Alabama would be reduced to control by members representing 19.4% of the people of the State. The 34 smallest counties, whose total population is less than that of Jefferson County, would have a majority of the total membership of the Senate. The only conceivable rationalization of this provision is that it is based on political units of the State and is analogous to the requirement [fol. 367] of the Constitution of the United States that the Senate "shall be composed of two Senators from each

* Justices Livingston, Lawson and Goodwyn.

State." Article I, Section 3, Clause 1, superseded by Amendment 17. The analogy cannot survive the most superficial examination into the history of the requirement of the Federal Constitution and the diametrically opposing history of the requirement of the Alabama Constitution that representation shall be based on population. Nor can it survive a comparison of the different political natures of states and counties. It has been held repeatedly in Alabama that a county derives its power from the State; that a county is but a governmental agency, possessing no power and subject to no duty not originating from the law by which it is created and in which its functions are defined. The Alabama courts have said that a county is nothing more than an involuntary political or civil division of the State, created by statute to aid in the administration of government; that whatever power the county possesses, or whatever duty it is required to perform, originates solely in the statutes creating it, or in the statutes declaring its power and duty. *Askew* v. *Hale County*, 54 Ala. 639; *State* v. *Butler*, 225 Ala. 191, 142 So. 531; *Tuscaloosa County* v. *Alabama Great Southern R. R. Co.*, 227 Ala. 428, 150 So. 328; *Montgomery* v. *State*, 228 Ala. 296, 153 So. 394; *Moore* v. *Walker County*, 236 Ala. 688, 185 So. 175.

In a previous order we indicated our view that the controlling or dominant provision of the Alabama Constitution on the subject of representation in the Legislature was the last sentence of § 284 heretofore quoted. To some extent that thought is emphasized separately as to the House by §§ 198 and 199 and as to the Senate by § 200, but at the same time diluted by other and somewhat conflicting requirements. As to the House, it is provided that each county shall be entitled to one representative and that the total shall be not more than 105 plus the number of new counties subsequently created, so that the total membership of the House is now 106, of which 67 are distributed one to each of the 67 counties, leaving only 39 to be apportioned among the several counties according to the number of inhabitants in each. As to the Senate, it is provided by § 197 that, "The whole number of senators shall be not less than one-fourth or more than one-third of the whole number of representatives." At present the number of senators is the maximum.

[fol. 368] 35. Section 200 provides for "as many senatorial districts as there are senators, which districts shall be as nearly equal to each other in the number of inhabitants as may be, and each shall be entitled to one senator, and no more." It further provides that, "No county shall be divided between two districts, and no district shall be made up of two or more counties not contiguous to each other."

If what we have called the controlling or dominant provision that representation shall be based upon population should be met completely in both Houses, then, without doubt, the State would accord to every person the equal protection of the laws in compliance with the Fourteenth Amendment. It is difficult to determine how far that overriding requirement of the Federal Constitution can be met and also comply with each of the more detailed requirements of the Alabama Constitution. Certainly an earnest effort must be made to meet all such requirements, and it is only in the event that proves impossible that the Supremacy Clause of the Federal Constitution would cause any irreconcilable and conflicting requirement of the State Constitution to give way. Such a result must appear necessary beyond a reasonable doubt before any of the requirements of the State Constitution can be ignored. The result is that we must approach the task of finding a remedy for the existing invidious discrimination within the framework of each of the detailed requirements of the Alabama Constitution.

Those requirements make it obvious that in *neither* the House nor the Senate can representation be based strictly and entirely upon population. There must be differences in the values of votes from the several counties in each House of the Legislature. In *Toombs* v. *Fortson*, *supra*, that court concluded that it must apply the "invidious discrimination" test "in determining whether the plaintiffs' rights under the equal protection clause have been violated by a system of legislative representation in either or both of the chambers of the State Legislature in such manner or to such a degree as to constitute invidious discrimination as to them."

In that case the court further stated that ". . . we do not find any authoritative decision by the Supreme Court that

[fol. 369] causes us to require that in order to give the plaintiff his constitutional rights the state legislature must be constituted of two Houses, both of which are elected according to population." It conceded, however, that there was some basis for that argument in the light of *Scholle* v. *Hare, supra,* especially when consideration is given to Mr. Justice Douglas's dissenting opinion in *MacDougall* v. *Green,* 335 U. S. 281, at pages 287, 289. See also *The Maryland Committee for Fair Representation, et al.* v. *Tawes, Governor,* No. 13920 Equity, from the Circuit Court for Anne Arundel County, Md., filed June 28, 1962. In the present case that doubtful question is further complicated by the detailed requirements of the Alabama Constitution which, as has been said, make it impossible for the representation in *either* House to be based strictly and entirely upon population. The result may well be that representation according to population *to some extent* must be required in *both* Houses if invidious discrimination in the legislative systems as a whole is to be avoided. Indeed, as has also been observed, it is the policy and theme of the Alabama Constitution to require representation according to population in both Houses as nearly as may be, while still complying with more detailed provisions. So long as only extremely partial representation according to population can be achieved in the House, we do not believe that the principle of representation according to population can be completely abandoned in the Senate, as would be done under the "67-Senator Amendment." The provision that the Senate shall consist of a senator from each of the 67 counties, in our opinion, in the light of the other provisions of the Alabama Constitution governing representation in the Legislature, would result in invidious discrimination and a denial of the equal protection of the laws. Compare *Brewer* v. *Gray,* Fla. 1956, 86 So. 2d 799. These reasons are in addition to those heretofore given in this opinion.

The proposed reapportionment of the Senate in the "Crawford-Webb Act" is a step in the right direction, but an extremely short step. It does correct a few of the most glaring discriminations by eliminating such single county senatorial districts as Lowndes with a population of 15,417, Wilcox with a population of 18,739, Barbour with a popu-

[fol. 370] lation of 24,700, and Marengo with a population of 27,098, and puts those small counties into multiple county districts. It makes Etowah, with a population of 96,980, into a single county district. The Act embodies some other improvements on the present system of representation in the Senate. On the other hand, this piece of legislation keeps the control of the Alabama Senate in 27.6% of the people of the State of Alabama. This represents an improvement of only 2.6% over the present control of 25.1%. The vote of a citizen of the Bibb and Perry senatorial districts would be worth twenty times that of a citizen in the Jefferson senatorial district. The vote of a citizen in the 6 smallest senatorial districts would be worth fifteen or more times that of a citizen in the Jefferson senatorial district. In 22 districts, a citizen would have eight or more times as much representation as a citizen residing in the Jefferson district. Other isolated variations are: Lauderdale (population 61,622) is given one-half a senator by being placed with Limestone (population 36,513), making a district of over 98,000 people. This is opposed to Pickens (population 21,882) and Lamar (population 14,271), having one-half a senator each, with a total population of 36,153. To aggravate this, Colbert (population 46,506), Franklin (population 21,988) and Marion (population 21,837), having a total population of over 90,000, are given one-third a senator, while Henry (population 15,286), Hale (population 19,537), Bibb (population 14,357), Perry (population 17,358), Bullock (population 13,462), Lowndes (population 15,417), Marengo (population 27,098) and Sumter (population 20,041), all in the Black Belt area, are each placed in two-county senatorial districts and thereby given one-half a senator. An analysis of the "Crawford-Webb Act" as it proposes to reapportion the Alabama Senate is attached hereto as Appendix "F." In summary as to the Senate, at best the "Crawford-Webb Act" represents a slight improvement over the present system of representation.

The "Crawford-Webb Act" as it concerns the Alabama House of Representatives is totally unacceptable. The proposed allocation of seats in the House adopts the Alabama constitutional requirement of one per county, with the remaining 39 seats allocated in a manner showing that no

[fol. 371] rational reapportionment plan was followed.[9] For instance, each representative from Jefferson County (12 total) and Mobile (6 total) must represent over 52,000 citizens. The Black Belt counties of Bullock, Lowndes, Autauga, Perry, Hale, Greene, Wilcox and Henry, all have representatives speaking for less than 20,000 citizens.

The Legislature itself must have recognized that the provisions of the "Crawford-Webb Act" for representation in the House were not fair or reasonable when it proposed in the "67-Senator Amendment" a reapportionment of the House of Representatives, based upon reason, with a rational regard for known and accepted standards of apportionment. The "67-Senator Amendment" proposes to apportion the seats in the House of Representatives according to the "Equal Proportions Method." (See footnote 9, *supra*.) It is an endeavor to equalize the representation between counties in the House of Representatives of a fixed size by reducing as much as possible the percentage difference between the representation of each county. This Court accepts and adopts as a part of its order that portion of the proposed "67-Senator Amendment" that relates to the reapportionment of the Alabama House of Representatives. This action will increase the representation of 6 counties as follows: Jefferson from 7 to 17; Mobile from 3 to 8; Calhoun from 2 to 3; Etowah from 2 to 3; Madison from 2 to 3; and Tusealoosa from 2 to 3. It will decrease the representation of 19 counties as follows: Dallas from 3 to 2; the following each from 2 to 1: Jackson, Chambers, Tallapoosa, Hale, Perry, Sumter, Marengo, Wilcox, Lowndes, Elmore, Butler, Pike, Lee, Russell, Barbour, Henry, Clarke and Bullock. It will result in apportioning the House seats (106) as follows: Jefferson—17 (population 634,864); Mobile—8 (population 314,301); Montgomery—4 (population 169,210); Calhoun—3 (population 95,878); Etowah—3 (population 96,980); Madison—3 (population 117,348); Tuscaloosa—3 (population 109,047); Dallas, Lauderdale, Morgan, Talladega and Walker—2 each; the remaining counties—1 each.

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[9] See "A Survey of Methods of Reapportionment in Congress," by Edward V. Huntington, Department of Mathematics, Harvard University, Senate Document No. 304, 76th Congress, Third Session.

As a permanent piece of legislation the "Crawford-Webb [fol. 372] Act" would remain in effect not subject to alteration until the next decennial federal census. See §§ 198 and 200 of the Constitution of Alabama of 1901. The Attorney General of Alabama so argues in his brief, as follows: ". . . if the constitutional amendment is defeated, the statutory bill, if constitutionally sound, will be effective and cannot be changed before the next Federal Census." Because any legislative reapportionment is not subject to change over such a long period, we called attention in our order of April 14, 1962 to the importance of constitutional standards being met "not halfheartedly but fully." As a piece of permanent legislation the provisions of the "Crawford-Webb Act" both as to the Senate and as to the House are totally unacceptable.

Those provisions are unacceptable for the further reason that the effective date of the Act is postponed until the general election to be held in November 1966, so as to await the approval or disapproval by the voters of the "67-Senator Amendment." Such postponement was unnecessary because, as we have already held, the portion of that proposed amendment providing a senator for each of the 67 counties, if approved by the voters, would itself be unconstitutional. No good reason is shown, therefore, why the plaintiffs and others like situated should be thus postponed in the exercise of their rights to the equal protection of the laws, nor why this Court should not now take some steps which may enable the Legislature elected in November 1962 to provide for a fair and proper reapportionment.

The changes resulting from the present order of this Court, unlike those which would result from a permanent Act of the Legislature, will be subject to change by the newly elected Legislature. As indicated in our order of April 14, such changes should be held to the minimum necessary to release the strangle hold on the Legislature and permit it to reapportion itself.

The duty to reapportion rests on the Legislature. This Court acts in the matter reluctantly because of the long-continued default and total inability of the Legislature to reapportion itself. Even under such circumstances, we think

that a federal court, in the light of its delicate relationship with a state legislature, should, so far as is possible, accept such parts of the Acts of the Legislature as have any merit [fol. 373] in framing the order of the Court. For the purpose of the order of the Court to release the strangle hold on the Legislature and permit it to reapportion itself, such parts of the Acts of the Legislature need not meet the standard of constitutionality required of a permanent Act of reapportionment.

We have no hesitancy in accepting as a part of this Court's order the provisions of the proposed "67-Senator Amendment" relating to the House of Representatives. The real difficulty comes as to the Senate. The proposed reapportionment of the Senate in the "Crawford-Webb Act," unacceptable as a piece of permanent legislation, may not even break the strangle hold. The only alternatives, however, which have been suggested or which appear to be subject to approval by the application of mathematical or judicial as distinguished from political standards, would result in very drastic reapportionment, and would probably place 9 counties having over half the population of the State in control of the Senate. Several senators would have to be allotted to Jefferson County and more than one to Mobile County and to Montgomery County. If the provisions of the State Constitution do not permit a single county to be divided into more than one senatorial district, such restriction would have to be held in conflict with the overriding requirement of equal protection of the laws provided by the Federal Constitution. We are not yet convinced of such conflict beyond a reasonable doubt. Despite our doubts as to their sufficiency, we therefore accept, in framing our order, that part of the "Crawford-Webb Act" providing for the reapportionment of the Senate.

It is this Court's intention that the changes relating to the House of Representatives provided in the proposed "67-Senator Amendment" and those relating to the Senate provided in the "Crawford-Webb Act" should go into effect at the general election to be held in the State in November 1962, and with the Legislature as provisionally reapportioned by this Court taking office immediately after said election. It is this Court's further intention to retain juris-

diction of this case and defer any hearing on plaintiffs' motion for a final injunction until the Legislature, as provisionally reapportioned by this order, has an opportunity to provide for a true reapportionment of both Houses of [fol. 374] the Alabama Legislature. The Court hopes that the moderate steps taken by this order may be enough to break the strangle hold. They certainly will not suffice as any permanent reapportionment. If they should prove insufficient to break the strangle hold, the Court remains under the solemn duty to relieve the plaintiffs and other citizens like situated from further denial of the equal protection of the laws. That much must be accomplished before there can be a final disposition of this case.

In order to effectuate this opinion the Court will issue an appropriate order.

Done this the 21st day of July, 1962.

Richard T. Rives, United States Circuit Judge.
Daniel H. Thomas, United States District Judge.
Frank M. Johnson, Jr., United States District Judge.

[fol. 375]

APPENDIX "A" TO OPINION

"Sec. *198*. The house of representatives shall consist of not more than one hundred and five members, unless new counties shall be created, in which event each new county shall be entitled to one representative. The members of the house of representatives shall be apportioned by the legislature among the several counties of the state, according to the number of inhabitants in them, respectively, as ascertained by the decennial census of the United States, which apportionment, when made, shall not be subject to alteration until the next session of the legislature after the next decennial census of the United States shall have been taken."

• • •

"Sec. *199*. It shall be the duty of the legislature at its first session after the taking of the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the

number of representatives and apportion them among the several counties of the state, according to the number of inhabitants in them, respectively; provided, that each county shall be entitled to at least one representative."

• • •

"Sec. *200*. It shall be the duty of the legislature at its first session after taking of the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the number of senators, and to divide the state into as many senatorial districts as there are senators, which districts shall be as nearly equal to each other in the number of inhabitants as may be, and each shall be entitled to one senator, and no more; and such districts, when formed, shall not be changed until the next apportioning session of the legislature, after the next decennial census of the United States shall have been taken; provided, that counties created after the next preceding apportioning session of the legislature may be attached to senatorial districts. No county shall be divided between two districts, and no district shall be made up of two or more counties not contiguous to each other."

[fol. 376]

APPENDIX "B" TO OPINION

S. 29

By Mr. Gaither

Enrolled, An Act, Proposing an amendment to the Constitution of Alabama relating to legislative apportionment. BE IT ENACTED BY THE LEGISLATURE OF ALABAMA: *Section 1.* The following amendment to the Constitution of Alabama 1901 is proposed and shall become valid as a part thereof when approved and proclaimed as prescribed by law: *Proposed Amendment 1.* The legislature of Alabama shall consist of a senator for each county and 106 members of the house of representatives, to be apportioned among the several counties as herein prescribed; provided, that in addition to the above number of repre-

sentatives each new county hereafter created shall be entitled to at least one representative. 2. At the general election in 1966, and every four years thereafter, a senator shall be elected by the qualified electors of each county in the state. 3. At the general election in 1966, and every four years thereafter, until the house of representatives is reapportioned as herein provided, the qualified electors of each county in the state shall elect such number of representatives as may be apportioned to the county as follows: The county of Jefferson shall have and elect seventeen representatives; the county of Mobile shall have and elect eight representatives; the county of Montgomery shall have and elect four representatives; the counties of Calhoun, Etowah, Madison and Tuscaloosa shall each have and elect three representatives; the counties of Dallas, Lauderdale, Morgan, Talladega and Walker shall each have and elect two representatives; and the remaining counties of the state shall each have and elect one representative. 4. On the first day, or within one week thereafter, of the regular session of the legislature in 1971, and every fifth regular session thereafter, the clerk of the house of representatives shall transmit to the secretary of state a statement showing the whole number of persons in each county under the most recent decennial census of the United States, and the number of representatives to which each county will be entitled under an apportionment of the then existing number of representatives by the method known as the method of equal proportions, no county to receive less than one representative. 5. In Section 284 of this Constitution as amended, strike out the last sentence thereof and insert the following sentence: Representation in the house of representatives of the legislature shall be based upon population. 6. Article IX (sections 197-203) of this Constitution is hereby expressly repealed. *Section 2.* An election upon the proposed amendment is ordered to be held on the date of the general election next succeeding the final adjournment of the current session of the Legislature. The election shall be held in accordance with the provisions of Sections 284 and 285 of the Constitution of Alabama, as amended, and Chapter 1, Article 18, Title 17 of the Code of Alabama 1940. *Sec-*

tion 3. Notice of the election and of the proposed amendment shall be given by proclamation of the Governor, which proclamation shall be published once a week for four successive weeks next preceding the day appointed for the election in a newspaper in each county of the State. In every county in which no newspaper is published, a copy of the notice shall be posted at each courthouse and post office.

/s/ ALBERT BOUTWELL
President and Presiding Officer of the Senate.

No. 93
RECEIVED
JUL 13 1962
TIME 2:20 P.M.
Secretary of State

/s/ VIRGIS M. ASHWORTH
Speaker of the House of Representatives.

[fol. 377]

2-29-MS

S. 29

Senate 6-20-62

I hereby certify that the within Act originated in and passed the Senate, as amended.

Senate 7-12-62

I hereby certify that the within Act originated in and passed the Senate, as amended by Conference Committee Report.

J. E. Speight,
Secretary

House of Representatives
Passed 7-10-62, as amended.

Passed 7-12-62, as amended by Conference Committee Report.

By: Mr. Gaither.

[fol. 378]

APPENDIX "C" TO OPINION

Bevill, Shumate, Gilchrist,
Hanby, Oden

H. 59

Enrolled, An Act, To fix the number of senators and representatives in the legislature, divide the state into senatorial districts, and apportion the senators and representatives among the several districts and counties.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. The senate of the legislature shall be composed of 35 senators representing 35 senatorial districts, each district to elect one senator and no more.

Section 2. The state is hereby divided into 35 senatorial districts as follows:

First, the counties of Lauderdale and Limestone; second, the counties of Lawrence and Morgan; third, the counties of Cullman and Winston; fourth, the county of Madison; fifth, the counties of Jackson and Marshall; sixth, the county of Etowah; seventh, the county of Calhoun; eighth, the county of Talladega; ninth, the counties of Randolph and Chambers; tenth, the counties of Elmore and Tallapoosa; eleventh, the county of Tuscaloosa; twelfth, the counties of Fayette and Walker; thirteenth, the county of Jefferson; fourteenth, the counties of Pickens and Lamar; fifteenth, the counties of Autauga, Chilton and Shelby; sixteenth, the counties of Monroe and Wilcox; seventeenth, the counties of Butler, Covington and Conecuh; eighteenth, the counties of Bibb and Perry; nineteenth, the counties of Clarke, Choctaw and Washington; twentieth, the counties of Marengo and Sumter; twenty-first, the counties of Baldwin and Escambia; twenty-second, the counties of Blount and St. Clair; twenty-third, the counties of Dale and Geneva; twenty-fourth, the counties of Barbour and Pike; twenty-fifth, the counties of Coffee and Crenshaw;

twenty-sixth, the counties of Bullock and Macon; twenty-seventh, the counties of Lee and Russell; twenty-eighth, the county of Montgomery; twenty-ninth, the counties of Cherokee and DeKalb; thirtieth, the counties of Dallas and Lowndes; thirty-first, the counties of Colbert, Franklin and Marion; thirty-second, the counties of Greene and Hale; thirty-third, the county of Mobile; thirty-fourth, the counties of Coosa, Clay and Cleburne; thirty-fifth, the counties of Henry and Houston.

In districts consisting of more than one county, the senators shall not be elected for more than one term consecutively from any one county in the district, but shall reside in and be elected alternately and in turn from each of the counties within such district. The first senator to be elected in such districts shall reside in the county having the largest population, except where that county had the last preceding senator. It is provided, however, that any senator in office on the effective date of this enactment shall be eligible to succeed himself as a member of the Senate, any other provision of this paragraph to the contrary notwithstanding.

Section 3. The house of representatives of the legislature shall consist of 106 members distributed among the several counties of the state as follows:

The county of Jefferson shall have and elect 12, the county of Mobile 6, and the county of Montgomery 4; the counties of Calhoun, Etowah, Madison and Tuscaloosa 3 each; the counties of Baldwin, Colbert, Cullman, Dallas, Houston, Lauderdale, Lee, Marshall, Morgan, Russell, Talladega and Walker 2 each; and the remaining counties 1 each.

Section 4. This Act shall take effect for the election of senators and representatives at the general election to be held in November 1966, and shall be effective thereafter [fol. 379] until the legislature is reapportioned according to law.

Section 5. The provisions of this Act are severable. If any part of this Act is declared invalid or unconstitu-

tional, such declaration shall not affect the part which remains.

/s/ VIRGIS M. ASHWORTH
Speaker of the House of Representatives

/s/ ALBERT BOUTWELL
President and Presiding Officer of the Senate

APPROVED July 12, 1962
TIME: 1037 AM

/s/ JOHN PATTERSON
Governor

House of Representatives
July 10, 1962

I hereby certify that the within Act originated in and was passed by the House June 26, 1962 as amended.

Oakley Melton, Jr.
Clerk

Senate	7/7/62	Amended and Passed
House	7/10/62	Concurred in Senate Amendment

No. 91
RECEIVED
Jul 12 1962
TIME 10:45 A.M.
Secretary of State

REPRESENTATION BY COUNTIES: (1901-1960)

County	1901 Total Pop.	1901 No. Rep's	1901 Pop. Per Rep.	1950 Total Pop.	1950 No. Rep's	1950 Pop. Per Rep.	1960 Total Pop.	1960 No. Rep's	1960 Pop. Per Rep.
1. Autauga	17,915	1	17,915	18,186	1	18,186	18,739	1	18,739
2. Baldwin	13,194	1	13,194	40,997	1	40,997	49,088	1	49,088
3. Barbour	35,152	2	17,576	28,892	2	14,446	24,700	2	12,350
4. Bibb	18,498	1	18,498	17,987	1	17,987	14,357	1	14,357
5. Blount	23,119	1	23,119	28,975	1	28,975	25,449	1	25,449
6. Bullock	31,954	2	15,972	16,054	2	8,027	13,462	2	6,731
7. Butler	25,760	2	12,880	29,228	2	14,614	24,560	2	12,280
8. Calhoun	34,874	2	17,437	79,539	2	39,769	95,878	2	47,939
9. Chambers	32,554	2	16,277	39,528	2	19,764	37,828	2	18,914
10. Cherokee	21,096	1	21,096	17,634	1	17,634	16,303	1	16,303
11. Chilton	16,522	1	16,522	26,922	1	26,922	25,693	1	25,693
12. Choctaw	18,136	1	18,136	19,152	1	19,152	17,870	1	17,870
13. Clarke	27,790	2	13,895	26,548	2	13,274	25,738	2	12,869
14. Clay	17,099	1	17,099	13,929	1	13,929	12,400	1	12,400
15. Cleburne	13,206	1	13,206	11,904	1	11,904	10,911	1	10,911
16. Coffee	20,972	1	20,972	30,720	1	30,720	30,583	1	30,583
17. Colbert	22,341	1	22,341	39,561	1	39,561	46,506	1	46,506
18. Conecuh	17,514	1	17,514	21,766	1	21,766	17,762	1	17,762
19. Coosa	16,144	1	16,144	11,766	1	11,766	10,726	1	10,726
20. Covington	15,346	1	15,346	40,373	1	40,373	35,631	1	35,631
21. Crenshaw	19,668	1	19,668	18,981	1	18,981	14,909	1	14,909
22. Cullman	17,849	1	17,849	49,046	1	49,046	45,572	1	45,572
23. Dale	21,189	1	21,189	20,828	1	20,828	31,066	1	31,066
24. Dallas	54,657	3	18,219	56,270	3	18,757	56,667	3	18,889
25. DeKalb	23,558	1	23,558	45,048	1	45,048	41,417	1	41,417
26. Elmore	26,098	2	13,049	31,649	2	15,824	30,524	2	15,262
27. Escambia	11,320	1	11,320	31,443	1	31,443	33,511	1	33,511
28. Etowah	27,360	2	13,680	93,892	2	46,946	96,980	2	48,490
29. Fayette	14,132	1	14,132	19,388	1	19,388	16,148	1	16,148
30. Franklin	16,511	1	16,511	25,705	1	25,705	21,988	1	21,988
31. Geneva	19,096	1	19,096	25,899	1	25,899	22,310	1	22,310
32. Greene	24,182	1	24,182	16,482	1	16,482	13,600	1	13,600
33. Hale	31,010	2	15,505	20,832	2	10,416	19,537	2	9,769
34. Henry	36,146	2	18,073	18,674	2	9,337	15,286	2	7,643

	1901			1950			1960		
	Total Pop.	No. Rep's	Pop. Per Rep.	Total Pop.	No. Rep's	Pop. Per Rep.	Total Pop.	No. Rep's	Pop. Per Rep.
35. Houston				46,522	1	46,522	50,718	1	50,718
36. Jackson	30,508	2	15,254	38,988	2	19,494	36,681	2	18,341
37. Jefferson	140,420	7	20,060	558,179	7	79,740	634,864	7	90,695
38. Lamar	16,084	1	16,084	16,441	1	16,441	14,271	1	14,271
39. Lauderdale	26,543	2	13,274	54,179	2	27,089	61,622	2	30,811
40. Lawrence	20,124	1	20,124	27,128	1	27,128	24,501	1	24,501
41. Lee	31,826	2	15,913	45,073	2	22,536	49,754	2	24,877
42. Limestone	22,387	1	22,387	35,766	1	35,766	36,513	1	36,513
43. Lowndes	35,650	2	17,825	18,018	2	9,009	15,417	2	7,709
44. Macon	23,126	1	23,126	30,561	1	30,561	26,717	1	26,717
45. Madison	43,702	2	21,851	72,503	2	36,451	117,348	2	58,674
46. Marengo	38,314	2	19,157	29,494	2	14,747	27,098	2	13,549
47. Marion	14,494	1	14,494	27,264	1	27,264	21,837	1	21,837
48. Marshall	23,289	1	23,289	45,090	1	45,090	48,018	1	48,018
49. Mobile	62,739	3	20,913	231,105	3	77,035	314,301	3	104,767
50. Monroe	23,666	1	23,666	25,732	1	25,732	22,372	1	22,372
51. Montgomery	72,044	4	18,011	138,565	4	34,741	169,210	4	42,303
52. Morgan	28,820	2	14,410	52,924	2	26,462	60,454	2	30,227
53. Perry	31,782	2	15,891	20,439	2	10,219	17,358	2	8,679
54. Pickens	24,402	1	24,402	24,349	1	24,349	21,882	1	21,882
55. Pike	29,172	2	14,586	30,608	2	15,304	25,987	2	12,994
56. Randolph	21,647	1	21,647	22,513	1	22,513	19,477	1	19,477
57. Russell	27,082	2	13,541	40,364	2	20,182	46,351	2	23,176
58. Shelby	23,684	1	23,684	30,362	1	30,362	32,132	1	32,132
59. St. Clair	19,425	1	19,425	26,687	1	26,687	25,388	1	25,388
60. Sumter	32,710	2	16,355	23,610	2	11,805	20,041	2	10,021
61. Talladega	35,772	2	17,886	63,639	2	31,819	65,495	2	32,748
62. Tallapoosa	29,674	2	14,837	35,074	2	17,537	35,007	2	17,504
63. Tuscaloosa	36,146	2	18,073	94,092	2	47,046	109,047	2	54,524
64. Walker	25,162	2	12,581	63,769	2	31,884	54,211	2	27,106

[fol. 382]

County	1901 Total Pop.	1901 No. Rep's	1901 Pop. Per Rep.	1950 Total Pop.	1950 No. Rep's	1950 Pop. Per Rep.	1960 Total Pop.	1960 No. Rep's	1960 Pop. Per Rep
65. Washington	11,134	1	11,134	15,612	1	15,612	15,372	1	15,372
66. Wilcox	35,630	2	17,815	23,476	2	11,738	18,739	2	9,369
67. Winston	9,554	1	9,554	18,250	1	18,250	14,858	1	14,858
LARGEST -			24,402			79,740			104,767
SMALLEST -			9,554			8,027			6,731
DIFFERENCE			14,848			71,713			98,036
STATE .	1,828,697	105	17,416	3,061,743	106	28,884	3,244,396	106	30,607

SENATORIAL DISTRICTS

(one Senator per district)

District	Total Population			Counties
	1900	1950	1960	
1	48,946	89,943	98,135	Lauderdale and Limestone
2	48,944	80,052	84,955	Lawrence and Morgan
3	50,522	96,271	85,879	Blount, Cullman and Winston
4	43,702	72,903	117,348	Madison
5	53,797	84,078	84,699	Jackson and Marshall
6	52,749	120,579	122,368	Etowah and St. Clair
7	34,874	79,538	95,878	Calhoun
8	35,773	63,639	65,485	Talladega
9	54,201	62,041	57,305	Chambers and Randolph
10	55,774	66,723	65,531	Elmore and Tallapoosa
11	36,147	94,092	109,047	Tuscaloosa
12	55,378	99,598	84,630	Fayette, Lamar and Walker
13	140,420	558,179	634,864	Jefferson
14	57,112	47,959	41,923	Pickens and Sumter
15	57,121	75,470	76,564	Autauga, Chilton and Shelby
16	35,651	18,018	15,417	Lowndes
17	58,621	91,377	77,953	Butler, Conecuh and Covington
18	50,281	38,426	31,715	Bibb and Perry
19	57,060	61,312	59,180	Choctaw, Clarke and Washington
20	38,315	29,494	27,098	Marengo
21	48,180	98,172	104,971	Baldwin, Escambia and Monroe
22	35,631	23,476	18,739	Wilcox
23	40,285	46,727	53,376	Dale and Geneva
24	35,152	28,892	24,700	Barbour
25	69,812	80,309	70,479	Coffee, Crenshaw and Pike
26	55,070	46,615	40,179	Bullock and Macon
27	58,909	85,437	96,105	Lee and Russell
28	72,047	138,965	169,210	Montgomery
29	44,654	62,682	57,720	Cherokee and DeKalb
30	54,657	56,270	56,967	Dallas
31	52,346	92,530	90,331	Colbert, Franklin and Marion
32	55,193	37,314	33,137	Greene and Hale
33	62,740	231,105	314,301	Mobile
34	46,449	37,599	34,037	Clay, Cleburne and Coosa
35	36,147	65,196	66,004	Henry and Houston

[fol. 383]

APPENDIA

3	50,522	96,271	85,879	Blount, Cullman and Winston
4	43,702	72,903	117,348	Madison
5	53,797	84,078	84,69	Jackson and Marshall
6	52,749	120,579	122,368	Etowah and St. Clair
7	34,874	79,539	95,878	Calhoun
8	35,773	63,639	65,485	Talladega
9	54,201	62,041	57,305	Chambers and Randolph
10	55,774	66,723	65,531	Elmore and Tallapoosa
11	36,147	94,092	109,047	Tuscaloosa
12	55,378	99,598	84,630	Fayette, Lamar and Walker
13	140,420	558,179	634,864	Jefferson
14	57,112	47,959	41,923	Pickens and Sumter
15	57,121	75,470	76,564	Autauga, Chilton and Shelby
16	35,651	18,018	15,417	Lowndes
17	58,621	91,377	77,953	Butler, Conecuh and Covington
18	50,281	38,426	31,715	Bibb and Perry
19	57,060	61,312	59,180	Choctaw, Clarke and Washington
20	38,315	29,494	27,098	Marengo
21	48,180	98,172	104,971	Baldwin, Escambia and Monroe
22	35,631	23,476	18,739	Wilcox
23	40,285	46,727	53,376	Dale and Geneva
24	35,152	28,892	24,700	Barbour
25	69,812	80,309	70,479	Coffee, Crenshaw and Pike
26	55,070	46,615	40,179	Bullock and Macon
27	58,909	85,437	96,105	Lee and Russell
28	72,047	138,965	169,210	Montgomery
29	44,654	62,682	57,720	Cherokee and DeKalb
30	54,657	56,270	56,667	Dallas
31	52,346	92,530	90,331	Colbert, Franklin and Marion
32	55,193	37,314	33,137	Greene and Hale
33	62,740	231,105	314,301	Mobile
34	46,449	37,529	34,037	Clay, Cleburne and Coosa
35	36,147[1]	65,196	66,004	Henry and Houston
35	1,828,697[2]	3,061,743	3,266,740[3]	

1. Houston added to circuit on creation of county out of Dale, Geneva and Henry in 1903.

2. True senatorial district in 1901 - 53,248

3. True senatorial district in 1961 - 93,235

SENATE DISTRICTS PROVIDED IN "CRAWFORD-WEBB ACT" SHOWING POPULATION VARIATIONS

DISTRICTS	POPULATION	VARIATION[1]	DISTRICTS	POPULATION	VARIATION[1]
(Under Represented)					
Jefferson	634,864	+ 541,529	Henry Houston	66,004	- 27,331
Mobile	314,301	+ 220,966			
Montgomery	169,210	+ 75,875	Tallapoosa Elmore	65,531	- 27,804
Madison	117,348	+ 24,013	Talladega	65,495	- 27,840
Tuscaloosa	109,047	+ 15,712	Cullman * Winston	60,430	- 32,498
Lauderdale Limestone	98,135	+ 4,800	Choctaw Clarke		
Etowah *	96,980	+ 3,645	Washington	56,180	- 34,155
Lee Russell	96,105	+ 2,770	Cherokee DeKalb	57,720	- 35,615
Calhoun	95,678	+ 2,543	Chambers Randolph	57,305	- 36,030
(Over Represented)					
Colbert Franklin Marion	90,331	- 3,004	Dale Geneva	53,376	- 39,959
			St. Clair * Blount	50,837	- 42,496
Lawrence Morgan	84,955	- 8,380	Barbour * Pike	50,687	- 42,648
Jackson Marshall	84,699	- 8,636	Marengo * Sumter	47,139	- 46,196
Baldwin * Escambia	82,599	- 10,736	Coffee * Crenshaw	45,492	- 47,843
Butler Conecuh	[illegible]	[illegible]	Wilcox *	41,111	- 52.224

[fol. 384]

Madison	117,348	+ 24,013	Talladega	65,495	- 27,840
Tuscaloosa	109,047	+ 15,712	Cullman * Winston	60,430	- 32,498
Lauderdale Limestone	98,135	+ 4,800	Choctaw Clarke Washington	56,180	- 34,155
Etowah *	96,980	+ 3,645	Cherokee DeKalb	57,720	- 35,615
Lee Russell	96,105	+ 2,770	Chambers Randolph	57,305	- 36,030
Calhoun	95,878	+ 2,543	Dale Geneva	53,376	- 39,959
(Over Represented)			St. Clair * Blount	50,837	- 42,496
Colbert Franklin Marion	90,331	- 3,004	Barbour * Pike	50,687	- 42,648
Lawrence Morgan	84,955	- 8,380	Marengo * Sumter	47,139	- 46,196
Jackson Marshall	84,699	- 8,636	Coffee Crenshaw *	45,492	- 47,843
Baldwin Escambia *	82,599	- 10,736	Wilcox Monroe *	41,111	- 52,224
Butler Conecuh Covington	77,953	- 15,282	Pickens Lamar *	36,153	- 56,182
Autauga Chilton Shelby	76,564	- 16,771	Bullock Macon	40,179	- 53,156
Lowndes * Dallas	72,084	- 21,251	Clay Cleburne Coosa	34,037	- 59,298
Fayette * Walker	70,359	- 22,976	Greene Hale	33,137	- 60,198
			Bibb Perry	31,715	- 61,620

1. Variation from Perfect District of 93,335.

* New districts created by this Act.

[fol. 384]

APPENDIX "F" TO OPINION

[fol. 385] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

[Title omitted]

MOTION FOR REHEARING AND MODIFICATION OF PROPOSED DECREE—Filed July 25, 1962

The undersigned hereby respectfully move the Court to modify its proposed decree in the above styled action insofar as said decree will provide for the provisional redistricting of the Senate of Alabama. It is moved that the decree be entered so as to require the provisional redistricting of the Senate in the manner shown in Table VII or Table VIII to the affidavit of David J. Vann which is in evidence before this Court.

As grounds for said motion, the movants assign the following grounds:

1. The Court by its opinion of July 21, 1962, decided each of the following principles which support this motion.

(a) Plaintiffs are entitled to relief.

(b) Plaintiffs are entitled to relief prior to the November 1962 elections.

(c) Plaintiffs are entitled to non-discriminatory representation in the Senate when combined with a House that is partially apportioned on the equal proportions method but with 67 of the 106 members arbitrarily assigned on the basis of one representative per county regardless of population.

[fol. 386] (d) The Senate adopted by the Court from the Webb-Crawford Act does not accord the plaintiffs equal protection of the laws or comply with the Constitution of Alabama.

(e) In order to accord the plaintiff equal protection of the laws, the Constitution of Alabama should be enforced so as to give each of the three largest counties more than one Senator in a Senate composed of 35 members.

2. The Plan adopted by the Court fails to unlock minority control of the Alabama Legislature.

(a) 49.06% of the people of Alabama live in 8 largest counties, but the people of these counties would have only 22.86% of the Senate vote, or less than ½ of the vote required to give them equal protection of the laws.

(b) 27.6% of the people of Alabama, residing in 37 counties, retain 51.4% of the Senate members, sufficient strength to control the action of the entire Legislature.

(c) In practical effect, when considered in the light of Section 2 of the Special Primary Act (H. 130),[1] [fol. 387] the Court's proposed Senate merely transfers one Senate seat from one over-represented district to another over-represented district; because nominations have already been made by the Democratic Party from the present Senate districts, and because the special primary bill enacted provides that such nominations shall stand as to any nominee who is the only nominee residing in a newly created Senate district under Court ordered provisional reapportionment, the Court's plan will result only in the transfer of one seat from the over-represented district composed of Dallas and Lowndes counties to the newly created, and also

[1] H. 130 provides in pertinent part: "If a senatorial district under the new apportionment is not composed of exactly the same territory that previously formed a senatorial district and only one resident of such new district has been nominated by a political party at a primary election in May 1962 as its candidate for state senator from a then existing district . . . such person shall be that political party's nominee as candidate for state senator from the newly created senatorial district at the general election in November 1962."

over-represented, district composed of Blount and St. Clair counties;[2] therefore the provisional Senate proposed will retain almost exactly its present composition; the apparent elimination of extremely small senate districts has been rendered nugatory by the Special Primary Act.

(d) The majority of the people residing in the 8 largest counties, because of the continued operation of the principle of allotting one representative per county without regard to population, have only 43 of the 106 members, or 40.6% of the House of Representatives.

3. The most blatant examples of invidious discrimination, by reason of which the jurisdiction of the Court attaches, have not been eliminated by the provisional Senate.

(a) The citizens of Jefferson County, who constitute 19.4% of the population of Alabama, are given only one, or merely 2.9% of the Senate members.

[fol. 388] (b) The citizens of Mobile County, who constitute 9.6% of the population of Alabama, are given only one, or merely 2.9%, of the Senate members.

(c) The citizens of Montgomery County, who constitute 5.2% of the population of Alabama, are given only one, or merely 2.9%, of the Senate members.

4. The plan adopted by the Court fails to give the citizens of the counties of Jefferson, Montgomery and Mobile equal protection of the laws in the most important process of devising a legislative remedy in the next session of the Legislature as contemplated by this Court in its opinion.

5. There is available to the Court a minimum change plan for the Senate that would eliminate all of the above mentioned examples of invidious discrimination and which would substantially comply with the Constitution of Ala-

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[2] Except for these districts each provisional district under the Webb-Crawford Plan has only one resident Democratic nominee: Dallas—Lowndes has two; Blount—St. Clair has none.

bama as interpreted by the Court to comply with equal protection of the laws.

This motion is made because the proposed decree of the Court raises questions which have not been argued to the Court, either orally or by brief. It is made because of the conviction that this Court's provisional remedy should give assurance that the reapportionment problem can be fully resolved by the Legislature of Alabama without further resort to this Court, and because of the conviction that the plan proposed by the Court with reference to the Senate will prevent this much desired result. Invidious denial of equal protection of laws should not be continued by order of this Court. The majority of the citizens of this State [fol. 389] should at least be afforded a substantially equal voice in the enactment of a permanent legislative apportionment plan in accordance with the Constitutions of Alabama and of the United States.

Respectively submitted,

David J. Vann, Robert S. Vance, C. H. Erskine Smith, Attorneys for Intervening Officers of the Jefferson County Democratic Campaign Committee.

John W. McConnell, Jr., Attorney for Intervening members of the Citizens Committee for Representative Government on Fair Basis.

Duly sworn to by David J. Vann, jurat omitted in printing.

Certificate of Service (omitted in printing).

[fol. 390] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

[Title omitted]

ORDER DENYING MOTION FOR REHEARING AND MODIFICATION—July 25, 1962

Several of the intervening plaintiffs have filed on this date a "Motion for Rehearing and Modification of Proposed Decree." This motion seeks to have this Court modify its opinion of July 21, 1962 and the decree entered thereon of July 25, 1962, to the extent that said opinion and decree relate to the reapportionment and redistricting of the Senate of Alabama.

[fol. 391] There are no new matters set out in the motion for rehearing and modification that were not presented to and thoroughly considered by this Court prior to issuing its opinion of July 21, 1962 and the decree issued thereon.

Upon consideration of the "Motion for Rehearing and Modification of Proposed Decree" and the several grounds thereof, it is, therefore, the Order, Judgment and Decree of this Court that said motion be and the same is hereby denied.

Done, this the 25th day of July, 1962.

Richard T. Rives, United States Circuit Judge,
Daniel H. Thomas, United States District Judge,
Frank M. Johnson, Jr., United States District Judge.

[fol. 392]

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

NORTHERN DIVISION

Civil Action No. 1744-N

M. O. SIMS, FRED A. BEAM, WYLIE JOHNSON, G. R. SOUTHARD, MILES S. LEE, PAUL FRIEDMAN, WILLIAM LINDSAY WILLIAMS, WILLIAM P. SHAW, JR., PRENTICE W. THOMAS, RICHARD D. TANNEHILL, PAUL M. BYRNE, DAVID R. BAKER, CHARLES MORGAN, JR., and GEORGE PEACH TAYLOR, for themselves jointly and severally, and for all others similarly situated, Plaintiffs,

R. E. FARR, MARSHALL MEADOWS, JACK HOPPING, JACK RYAN, MAX W. MORGAN, DAVID J. VANN, ROBERT S. VANCE, RICHARD P. HUMPHREY, JR., JOHN W. MCCONNELL, JR., JOSEPH N. LANGAN, WILLIAM M. WILLIAMS, JR., and GARET VAN ANTWERP, Intervening Plaintiffs,

VS.

BETTYE FRINK, Secretary of State of the State of Alabama; HARRELL HAMMONDS, Judge of Probate of Lowndes County, Alabama; JOHN A. SANKEY, Judge of Probate of Montgomery County, Alabama; J. PAUL MEEKS, Judge of Probate of Jefferson County, Alabama; JOHN GRENIER, Chairman of the Alabama State Republican Executive Committee; PERRY O. HOOPER, Secretary of the Alabama State Republican Executive Committee; ROY MAYHALL, Chairman of the Alabama State Democratic Executive Committee; H. G. RAINS, Secretary of the Alabama State Democratic Executive Committee; MACDONALD GALLION, Attorney General of the State of Alabama, Defendants.

DECREE—July 25, 1962

Pursuant to and in accordance with the opinion of this Court filed herein on July 21, 1962, and for the purpose of

effectuating that opinion, it is the Order, Judgment and Decree of this Court:

(1) That the plaintiffs, as citizens of the United States and of the State of Alabama, are denied the equal protection of the law accorded them by the Fourteenth Amendment to the Constitution of the United States by virtue of the debasement of their votes since the Legislature of the [fol. 393] State of Alabama has failed and continues to fail to reapportion itself as required by law.

(2) That the present apportionment of both Houses of the Legislature of the State of Alabama (which apportionment is pursuant to Article 9, §§ 202 and 203 of the Constitution of Alabama of 1901 and §§ 1 and 2, Title 32, Code of Alabama) constitutes "invidious discrimination" in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

(3) That Act No. 93, Senate Bill 29, commonly referred to as the "67-Senator Amendment," proposing an amendment to the Constitution of Alabama relating to legislative apportionment as passed in the 1962 Special Session of the Legislature for the State of Alabama on July 12, 1962, be and the same is hereby declared to be an unconstitutional proposal within the meaning of the equal protection provisions of the Fourteenth Amendment to the Constitution of the United States.

(4) That Act No. 91, House Bill 59, commonly referred to as the "Crawford-Webb Bill," passed in the 1962 Special Session of the Legislature and approved by the Governor of the State of Alabama on July 12, 1962, be and the same is hereby declared to be an unconstitutional Act within the meaning of the equal protection provisions of the Fourteenth Amendment to the Constitution of the United States.

(5) That Act No. 93, Senate Bill 29 (commonly referred to as the "67-Senator Amendment") and Act No. 91, House Bill 59 (commonly referred to as the "Crawford-Webb Bill"), both having been passed by the 1962 Special Session of the Legislature for the State of Alabama, are each void, invalid and ineffective to the extent that they attempt to

correct the denial of the plaintiffs' rights, said denial arising from the debasement of plaintiffs' votes in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

It is the further Order, Judgment and Decree of this Court that Bettye Frink, Secretary of State of the State of Alabama; John Grenier, Chairman of the Alabama State Republican Executive Committee; Perry O. Hooper, Secretary of the Alabama State Republican Executive Committee; Roy Mayhall, Chairman of the Alabama State Democratic Executive Committee; H. G. Rains, Secretary of the [fol. 394] Alabama State Democratic Executive Committee; MacDonald Gallion, Attorney General of the State of Alabama; James A. Rice, Judge of Probate of Autauga County, Alabama; W. R. Stuart, Judge of Probate of Baldwin County, Alabama; George Edward Little, Judge of Probate of Barbour County, Alabama; G. H. Stacy, Judge of Probate of Bibb County, Alabama; W. F. Maynor, Judge of Probate of Blount County, Alabama; Fred D. Main, Judge of Probate of Bullock County, Alabama; James T. Beeland, Judge of Probate of Butler County, Alabama; G. Clyde Brittain, Judge of Probate of Calhoun County, Alabama; O. D. Alsobrook, Judge of Probate of Chambers County, Alabama; Charles A. Formby, Judge of Probate of Cherokee County, Alabama; Jerald Clark White, Judge of Probate of Chilton County, Alabama; Richard Edwin McPhearson, Judge of Probate of Choctaw County, Alabama; W. Cecil Johnson, Judge of Probate of Clarke County, Alabama; G. W. Pruet, Judge of Probate of Clay County, Alabama; Thomas Jefferson Baber, Judge of Probate of Cleburne County, Alabama; J. Oscar English, Judge of Probate of Coffee County, Alabama; M. Gresham Hale, Judge of Probate of Colbert County, Alabama; Lloyd G. Hart, Judge of Probate of Conecuh County, Alabama; Mac Thomas, Judge of Probate of Coosa County, Alabama; Leland G. Enzor, Judge of Probate of Covington County, Alabama; John M. McSwean, Judge of Probate of Crenshaw County, Alabama; Graf Hart, Judge of Probate of Cullman County, Alabama; Kirke Adams, Judge of Probate of Dale County, Alabama; Bernard A. Reynolds, Judge of Probate of Dallas

County, Alabama; J. Frank Croley, Judge of Probate of DeKalb County, Alabama; W. M. (Willie) Cousins, Judge of Probate of Elmore County, Alabama; Reo Kirkland, Judge of Probate of Escambia County, Alabama; Wiley J. Hickman, Judge of Probate of Etowah County, Alabama; Clyde C. Cargile, Judge of Probate of Fayette County, Alabama; W. W. Weatherford, Judge of Probate of Franklin County, Alabama; R. S. Ward, Judge of Probate of Geneva County, Alabama; James Dennis Herndon, Judge of Probate of Greene County, Alabama; Robert K. Greene, Judge of Probate of Hale County, Alabama; Theodore R. Ward, Judge of Probate of Henry County, Alabama; Carl E. Sellers, Judge of Probate of Houston County, Alabama; Robert I. Gentry, Judge of Probate of Jackson County, Alabama; J. Paul Meeks, Judge of Probate of Jefferson County, Alabama; Victor C. Paul, Judge of Probate of Lamar County, Alabama; Estes R. Flynt, Judge of [fol. 395] Probate of Lauderdale County, Alabama; Isaac Johnson, Jr., Judge of Probate of Lawrence County, Alabama; Ira H. Weissinger, Judge of Probate of Lee County, Alabama; Mason Clifton Freeman, Judge of Probate of Limestone County, Alabama; Harrell Hammonds, Judge of Probate of Lowndes County, Alabama; William Varner, Judge of Probate of Macon County, Alabama; Ashford Todd, Judge of Probate of Madison County, Alabama; R. J. Westbrook, Judge of Probate of Marengo County, Alabama; Frank Pearce, Judge of Probate of Marion County, Alabama; Jesse Epps Corbin, Judge of Probate of Marshall County, Alabama; Vernol R. Jansen, Judge of Probate of Mobile County, Alabama; Eugene T. Millsap, Judge of Probate of Monroe County, Alabama; John A. Sankey, Judge of Probate of Montgomery County, Alabama; T. C. Almon, Judge of Probate of Morgan County, Alabama; David S. Lee, Judge of Probate of Perry County, Alabama; R. B. Harris, Judge of Probate of Pickens County, Alabama; Ben Reeves, Judge of Probate of Pike County, Alabama; Stell Benefield, Judge of Probate of Randolph County, Alabama; J. Shannon Burch, Judge of Probate of Russell County, Alabama; Hoyt B. Hamilton, Judge of Probate of Saint Clair County, Alabama; Conrad M. Fowler, Judge of Pro-

bate of Shelby County, Alabama; Wilbur Elisha Dearman, Judge of Probate of Sumter County, Alabama; William F. Killough, Judge of Probate of Talladega County, Alabama; Charles C. Adams, Judge of Probate of Tallapoosa County, Alabama; David M. Cochrane, Judge of Probate of Tuscaloosa County, Alabama; Nelson U. Allen, Judge of Probate of Walker County, Alabama; John G. Kimbrough, Judge of Probate of Washington County, Alabama; William Dannelly, Judge of Probate of Wilcox County, Alabama; and Loyd H. McDonald, Judge of Probate of Winston County, Alabama, be and each is enjoined and restrained from furnishing forms for nominations, from receiving nominations, petitions and papers, from certifying nominations, nominees, or elections, and from any other act necessary to the holding of elections, including primary elections, for members of the Alabama Legislature in districts as established by Article 9, §§ 202 and 203 of the Constitution of Alabama of 1901, and §§ 1 and 2, Title 32, Code of Alabama, except in accordance with the order and opinion of this Court filed herein on July 21, 1962 and except and in accordance with the apportionment of the Alabama Legislature as herein-[fol. 396] after specifically set out.

It is the further Order, Judgment and Decree of this Court:

(1) That the membership of the House of Representatives for the State of Alabama, effective on the day after the general election to be held in November, 1962, be and the same is hereby apportioned as follows:

The County of Jefferson shall have and elect seventeen representatives; the County of Mobile shall have and elect eight representatives; the County of Montgomery shall have and elect four representatives; the Counties of Calhoun, Etowah, Madison and Tuscaloosa shall each have and elect three representatives; the Counties of Dallas, Lauderdale, Morgan, Talladega and Walker shall each have and elect two representatives; and the remaining counties of the State of Alabama shall each have and elect one representative.

(2) That the Senate of the State of Alabama be and the same is hereby apportioned as follows:

First District: The Counties of Lauderdale and Limestone.

Second District: The Counties of Lawrence and Morgan.

Third District: The Counties of Cullman and Winston.

Fourth District: The County of Madison.

Fifth District: The Counties of Jackson and Marshall.

Sixth District: The County of Etowah.

Seventh District: The County of Calhoun.

Eighth District: The County of Talladega.

Ninth District: The Counties of Randolph and Chambers.

Tenth District: The Counties of Elmore and Tallapoosa.

Eleventh District: The County of Tuscaloosa.

Twelfth District: The Counties of Fayette and Walker.

Thirteenth District: The County of Jefferson.

Fourteenth District: The Counties of Pickens and Lamar.

Fifteenth District: The Counties of Autauga, Chilton and Shelby.

Sixteenth District: The Counties of Monroe and Wilcox.

Seventeenth District: The Counties of Butler, Covington and Conecuh.

[fol. 397] *Eighteenth District*: The Counties of Bibb and Perry.

Nineteenth District: The Counties of Clarke, Choctaw and Washington.

Twentieth District: The Counties of Marengo and Sumter.

Twenty-first District: The Counties of Baldwin and Escambia.

Twenty-second District: The Counties of Blount and Saint Clair.

Twenty-third District: The Counties of Dale and Geneva.

Twenty-fourth District: The Counties of Barbour and Pike.

Twenty-fifth District: The Counties of Coffee and Crenshaw.

Twenty-sixth District: The Counties of Bullock and Macon.

Twenty-seventh District: The Counties of Lee and Russell.

Twenty-eighth District: The County of Montgomery.

Twenty-ninth District: The Counties of Cherokee and DeKalb.

Thirtieth District: The Counties of Dallas and Lowndes.

Thirty-first District: The Counties of Colbert, Franklin and Marion.

Thirty-second District: The Counties of Greene and Hale.

Thirty-third District: The County of Mobile.

Thirty-fourth District: The Counties of Coosa, Clay and Cleburne.

Thirty-fifth District: The Counties of Henry and Houston.

(3) That the apportionment of the Alabama Legislature, both the House of Representatives and the Senate, as herein ordered and directed, shall be effective upon the filing of this decree, with the terms of office of the new

legislative seats herein created to commence on the day after the general election to be held in November, 1962.

(4) That the officials heretofore elected to either the House of Representatives or the Senate for the State of Alabama from counties and/or senatorial districts that are herein altered, changed or eliminated, shall continue to serve as such elected officials until the expiration of the terms of office of said senators and representatives on the day after the general election to be held in November, 1962.

(5) That the seats—both in the House of Representatives [fol. 398] and the Senate for the State of Alabama—that are herein ordered to be eliminated, not be refilled after the present terms of office, of said presently elected officials to said offices, expire in November, 1962.

It is the further Order, Judgment and Decree of this Court that Bettye Frink, Secretary of State of the State of Alabama; John Grenier, Chairman of the Alabama State Republican Executive Committee; Perry O. Hooper, Secretary of the Alabama State Republican Executive Committee; Roy Mayhall, Chairman of the Alabama State Democratic Executive Committee; H. G. Rains, Secretary of the Alabama State Democratic Executive Committee (in those counties and districts where said political parties desire to select and nominate candidates); MacDonald Gallion, Attorney General of the State of Alabama; and each of the probate judges in the State of Alabama as hereinafter named, their agents, employees, and successors in office, be and each is hereby, separately and severally, Directed and Enjoined to select and nominate—either by primary as authorized by House Bill 130, signed into law on July 23, 1962, or by political-party committee action that may be authorized by the laws of the State of Alabama—and provide for the election in the general election to be held in November, 1962, of the members of the House of Representatives and members of the Senate for the State of Alabama as follows and not otherwise:

(1) *Autauga County*: Judge of Probate, James A. Rice, Prattville; one House member and, with Shelby

and Chilton Counties, one Senate member for the Fifteenth Senatorial District.

(2) *Baldwin County*: Judge of Probate, W. R. Stuart, Bay Minette; one House member and, with Escambia County, one Senate member for the Twenty-first Senatorial District.

(3) *Barbour County*: Judge of Probate, George Edward Little, Clayton; one House member and, with Pike County, one Senate member for the Twenty-fourth Senatorial District.

(4) *Bibb County*: Judge of Probate, G. H. Stacy, Centerville; one House member and, with Perry County, one Senate member for the Eighteenth Senatorial District.

(5) *Blount County*: Judge of Probate, W. F. Maynor, Oneonta; one House member and, with Saint Clair County, one Senate member for the Twenty-second Senatorial District.

(6) *Bullock County*: Judge of Probate, Fred D. Main, Union Springs; one House member and, with Macon County, one Senate member for the Twenty-sixth Senatorial District.

[fol. 399] (7) *Butler County*: Judge of Probate, James T. Beeland, Greenville; one House member and, with Conecuh and Covington Counties, one Senate member for the Seventeenth Senatorial District.

(8) *Calhoun County*: Judge of Probate, G. Clyde Brittain, Anniston; three House members and one Senate member for the Seventh Senatorial District.

(9) *Chambers County*: Judge of Probate, O. D. Alsobrook, LaFayette; one House member and, with Randolph County, one Senate member for the Ninth Senatorial District.

(10) *Cherokee County*: Judge of Probate, Charles A. Formby, Centre; one House member and, with

DeKalb County, one Senate member for the Twenty-ninth Senatorial District.

(11) *Chilton County*: Judge of Probate, Jerald Clark White, Clanton; one House member and, with Autauga and Shelby Counties, one Senate member for the Fifteenth Senatorial District.

(12) *Choctaw County*: Judge of Probate, Richard Edwin McPhearson, Butler; one House member and, with Clarke and Washington Counties, one Senate member for the Nineteenth Senatorial District.

(13) *Clarke County*: Judge of Probate, W. Cecil Johnson, Grove Hill; one House member and, with Choctaw and Washington Counties, one Senate member for the Nineteenth Senatorial District.

(14) *Clay County*: Judge of Probate, G. W. Pruet, Ashland; one House member and, with Cleburne and Coosa Counties, one Senate member for the Thirty-fourth Senatorial District.

(15) *Cleburne County*: Judge of Probate, Thomas Jefferson Baber, Heflin; one House member and, with Clay and Coosa Counties, one Senate member for the Thirty-fourth Senatorial District.

(16) *Coffee County*: Judge of Probate, J. Oscar English, Elba; one House member and, with Crenshaw County, one Senate member for the Twenty-fifth Senatorial District.

(17) *Colbert County*: Judge of Probate, M. Gresham Hale, Tuscumbia; one House member and, with Franklin and Marion Counties, one Senate member for the Thirty-first Senatorial District.

(18) *Conecuh County*: Judge of Probate, Loyd G. Hart, Evergreen; one House member and, with Butler and Covington Counties, one Senate member for the Seventeenth Senatorial District.

(19) *Coosa County*: Judge of Probate, Mac Thomas, Rockford; one House member and, with Clay

and Cleburn Counties, one Senate member for the Thirty-fourth Senatorial District.

[fol. 400] (20) *Covington County*: Judge of Probate, Leland G. Enzor, Andalusia; one House member and, with Butler and Conecuh Counties, one Senate member for the Seventeenth Senatorial District.

(21) *Crenshaw County*: Judge of Probate, John M. McSwean, Luverne; one House member and, with Coffee County, one Senate member for the Twenty-fifth Senatorial District.

(22) *Cullman County*: Judge of Probate, Graf Hart, Cullman; one House member and, with Winston County, one Senate member for the Third Senatorial District.

(23) *Dale County*: Judge of Probate, Kirke Adams, Ozark; one House member and, with Geneva County, one Senate member for the Twenty-third Senatorial District.

(24) *Dallas County*: Judge of Probate, Bernard A. Reynolds, Selma; two House members and, with Lowndes County, one Senate member for the Thirtieth Senatorial District.

(25) *DeKalb County*: Judge of Probate, J. Frank Croley, Fort Payne; one House member and, with Cherokee County, one Senate member for the Twenty-ninth Senatorial District.

(26) *Elmore County*: Judge of Probate, W. M. (Willie) Cousins, Wetumpka; one House member and, with Tallapoosa County, one Senate member for the Tenth Senatorial District.

(27) *Escambia County*: Judge of Probate, Reo Kirkland, Brewton; one House member and, with Baldwin County, one Senate member for the Twenty-first Senatorial District.

(28) *Etowah County*: Judge of Probate, Wiley J. Hickman, Gadsden; three House members and one Senate member for the Sixth Senatorial District.

(29) *Fayette County*: Judge of Probate, Clyde C. Cargile, Fayette; one House member and, with Walker County, one Senate member for the Twelfth Senatorial District.

(30) *Franklin County*: Judge of Probate, W. W. Weatherford, Russellville; one House member and, with Colbert and Marion Counties, one Senate member for the Thirty-first Senatorial District.

(31) *Geneva County*: Judge of Probate, R. S. Ward, Geneva; one House member and, with Dale County, one Senate member for the Twenty-third Senatorial District.

(32) *Greene County*: Judge of Probate, James Dennis Herndon, Eutaw; one House member, with Hale County, one Senate member for the Thirty-second Senatorial District.

(33) *Hale County*: Judge of Probate, Robert K. Greene, Greensboro; one House member and, with Greene County, one Senate member for the Thirty-second Senatorial District.

[fol. 401] (34) *Henry County*: Judge of Probate, Theodore R. Ward, Abbeville; one House member and, with Houston County, one Senate member for the Thirty-fifth Senatorial District.

(35) *Houston County*: Judge of Probate, Carl E. Sellers, Dothan; one House member and, with Henry County, one Senate member for the Thirty-fifth Senatorial District.

(36) *Jackson County*: Judge of Probate, Robert I. Gentry, Scottsboro; one House member and, with Marshall County, one Senate member for the Fifth Senatorial District.

(37) *Jefferson County*: Judge of Probate, J. Paul Meeks, Birmingham; seventeen House members and one Senate member for the Thirteenth Senatorial District.

(38) *Lamar County*: Judge of Probate, Victor C. Paul, Vernon; one House member and, with Pickens County, one Senate member for the Fourteenth Senatorial District.

(39) *Lauderdale County*: Judge of Probate, Estes R. Flynt, Florence; two House members and, with Limestone County, one Senate member for the First Senatorial District.

(40) *Lawrence County*: Judge of Probate, Isaac Johnson, Jr., Moulton; one House member and, with Morgan County, one Senate member for the Second Senatorial District.

(41) *Lee County*: Judge of Probate, Ira H. Weissinger, Opelika; one House member and, with Russell County, one Senate member for the Twenty-seventh Senatorial District.

(42) *Limestone County*: Judge of Probate, Mason Clifton Freeman, Athens; one House member and, with Lauderdale County, one Senate member for the First Senatorial District.

(43) *Lowndes County*: Judge of Probate, Harrell Hammonds, Hayneville; one House member and, with Dallas County, one Senate member for the Thirtieth Senatorial District.

(44) *Macon County*: Judge of Probate, William Varner, Tuskegee; one House member and, with Bullock County, one Senate member for the Twenty-sixth Senatorial District.

(45) *Madison County*: Judge of Probate, Ashford Todd, Huntsville; three House members and one Senate member for the Fourth Senatorial District.

(46) *Marengo County*: Judge of Probate, R. J. Westbrook, Linden; one House member and, with Sumter County, one Senate member for the Twentieth Senatorial District.

(47) *Marion County*: Judge of Probate, Frank Pearce, Hamilton; one House member and, with Colbert

and Franklin Counties, one Senate member for the Thirty-first Senatorial District.

[fol. 402] (48) *Marshall County*: Judge of Probate, Jesse Epps Corbin, Guntersville; one House member and, with Jackson County, one Senate member for the Fifth Senatorial District.

(49) *Mobile County*: Judge of Probate, Vernol R. Jansen, Mobile; eight House members and one Senate member for the Thirty-third Senatorial District.

(50) *Monroe County*: Judge of Probate, Eugene T. Millsap, Monroeville; one House member and, with Wilcox County, one Senate member for the Sixteenth Senatorial District.

(51) *Montgomery County*: Judge of Probate, John A. Sankey, Montgomery; four House members and one Senate member for the Twenty-eighth Senatorial District.

(52) *Morgan County*: Judge of Probate, T. C. Almon, Decatur; two House members and, with Lawrence County, one Senate member for the Second Senatorial District.

(53) *Perry County*: Judge of Probate, David S. Lee, Marion; one House member and, with Bibb County, one Senate member for the Eighteenth Senatorial District.

(54) *Pickens County*: Judge of Probate, R. B. Harris, Carrollton; one House member and, with Lamar County, one Senate member for the Fourteenth Senatorial District.

(55) *Pike County*: Judge of Probate, Ben Reeves, Troy; one House member and, with Barbour County, one Senate member for the Twenty-fourth Senatorial District.

(56) *Randolph County*: Judge of Probate, Stell Benefield, Wedowee; one House member and, with Chambers County, one Senate member for the Ninth Senatorial District.

(57) *Russell County*: Judge of Probate, J. Shannon Burch, Phenix City; one House member and, with Lee County, one Senate member for the Twenty-seventh Senatorial District.

(58) *Saint Clair County*: Judge of Probate, Hoyt B. Hamilton, Ashville; one House member and, with Blount County, one Senate member for the Twenty-second Senatorial District.

(59) *Shelby County*: Judge of Probate, Conrad M. Fowler, Columbiana; one House member and, with Autauga and Chilton Counties, one Senate member for the Fifteenth Senatorial District.

(60) *Sumter County*: Judge of Probate, Wilbur Elisha Dearman, Livingston; one House member and, with Marengo County, one Senate member for the Twentieth Senatorial District.

(61) *Talladega County*: Judge of Probate, William F. Killough, Talladega; two House members and one Senate member for the Eighth Senatorial District.

(62) *Tallapoosa County*: Judge of Probate, Charles C. Adams, Dadeville; one House member and, with Elmore County, one Senate member for the Tenth Senatorial District.

[fol. 403] (63) *Tuscaloosa County*: Judge of Probate, David M. Cochrane, Tuscaloosa; three House members and one Senate member for the Eleventh Senatorial District.

(64) *Walker County*: Judge of Probate, Nelson U. Allen, Jasper; two House members and, with Fayette County, one Senate member for the Twelfth Senatorial District.

(65) *Washington County*: Judge of Probate, John G. Kimbrough, Chatom; one House member and, with Choctaw and Clarke Counties, one Senate member for the Nineteenth Senatorial District.

(66) *Wilcox County*: Judge of Probate, William Dannelly, Camden; one House member and, with Monroe County, one Senate member for the Sixteenth Senatorial District.

(67) *Winston County*: Judge of Probate, Loyd H. McDonald, Double Springs; one House member and, with Cullman County, one Senate member for the Third Senatorial District.

It is the further Order, Judgment and Decree of this Court that the apportionment of the Alabama Legislature as herein ordered remain in effect without change, except by order of this Court, until the Legislature of the State of Alabama reapportions itself in accordance with the equal protection provisions of the Fourteenth Amendment to the Constitution of the United States, which nothing in this decree shall prevent it from doing; such action of the Legislature, when taken, being subject to review by this Court.

It is the further Order, Judgment and Decree of this Court that Bettye Frink, Secretary of State of the State of Alabama; John Grenier, Chairman of the Alabama State Republican Executive Committee; Perry O. Hooper, Secretary of the Alabama State Republican Executive Committee; Roy Mayhall, Chairman of the Alabama State Democratic Executive Committee; H. G. Rains, Secretary of the Alabama State Democratic Executive Committee; MacDonald Gallion, Attorney General of the State of Alabama; James A. Rice, Judge of Probate of Autauga County, Alabama; W. R. Stuart, Judge of Probate of Baldwin County, Alabama; George Edward Little, Judge of Probate of Barbour County, Alabama; G. H. Stacy, Judge of Probate of Bibb County, Alabama; W. F. Maynor, Judge of Probate of Blount County, Alabama; Fred D. Main, Judge of Probate of Bullock County, Alabama; James T. Beeland, Judge of Probate of Butler County, Alabama; G. Clyde Brittain, Judge of Probate of Calhoun [fol. 404] County, Alabama; O. D. Alsobrook, Judge of Probate of Chambers County, Alabama; Charles A. Formby, Judge of Probate of Cherokee County, Alabama;

Jerald Clark White, Judge of Probate of Chilton County, Alabama; Richard Edwin McPhearson, Judge of Probate of Choctaw County, Alabama; W. Cecil Johnson, Judge of Probate of Clarke County, Alabama; G. W. Pruet, Judge of Probate of Clay County, Alabama; Thomas Jefferson Baber, Judge of Probate of Cleburne County, Alabama; J. Oscar English, Judge of Probate of Coffee County, Alabama; M. Gresham Hale, Judge of Probate of Calhoun County, Alabama; Loyd G. Hart, Judge of Probate of Conecuh County, Alabama; Mac Thomas, Judge of Probate of Coosa County, Alabama; Leland G. Enzor, Judge of Probate of Covington County, Alabama; John M. McSwean, Judge of Probate of Crenshaw County, Alabama; Graf Hart, Judge of Probate of Cullman County, Alabama; Kirke Adams, Judge of Probate of Dale County, Alabama; Bernard A. Reynolds, Judge of Probate of Dallas County, Alabama; J. Frank Croley, Judge of Probate of DeKalb County, Alabama; W. M. (Willie) Cousins, Judge of Probate of Elmore County, Alabama; Reo Kirkland, Judge of Probate of Escambia County, Alabama; Wiley J. Hickman, Judge of Probate of Etowah County, Alabama; Clyde C. Cargile, Judge of Probate of Fayette County, Alabama; W. W. Weatherford, Judge of Probate of Franklin County, Alabama; R. S. Ward, Judge of Probate of Geneva County, Alabama; James Dennis Herndon, Judge of Probate of Greene County, Alabama; Robert K. Greene, Judge of Probate of Hale County, Alabama; Theodore R. Ward, Judge of Probate of Henry County, Alabama; Carl E. Sellers, Judge of Probate of Houston County, Alabama; Robert I. Gentry, Judge of Probate of Jackson County, Alabama; J. Paul Meeks, Judge of Probate of Jefferson County, Alabama; Victor C. Paul, Judge of Probate of Lamar County, Alabama; Estes R. Flynt, Judge of Probate of Lauderdale County, Alabama; Isaac Johnson, Jr., Judge of Probate of Lawrence County, Alabama; Ira H. Weissinger, Judge of Probate of Lee County, Alabama; Mason Clifton Freeman, Judge of Probate of Limestone County, Alabama; Harrell Hammonds, Judge of Probate of Lowndes County, Alabama; William Varner, Judge of Probate of Macon County, Alabama; Ashford Todd, Judge of Probate of Madison County,

Alabama; R. J. Westbrook, Judge of Probate of Marengo [fol. 405] County, Alabama; Frank Pearce, Judge of Probate of Marion County, Alabama; Jesse Epps Corbin, Judge of Probate of Marshall County, Alabama; Vernol R. Jansen, Judge of Probate of Mobile County, Alabama; Eugene T. Millsap, Judge of Probate of Monroe County, Alabama; John A. Sankey, Judge of Probate of Montgomery County, Alabama; T. C. Almon, Judge of Probate of Morgan County, Alabama; David S. Lee, Judge of Probate of Perry County, Alabama; R. B. Harris, Judge of Probate of Pickens County, Alabama; Ben Reeves, Judge of Probate of Pike County, Alabama; Stell Benefield, Judge of Probate of Randolph County, Alabama; J. Shannon Burch, Judge of Probate of Russell County, Alabama; Hoyt B. Hamilton, Judge of Probate of Saint Clair County, Alabama; Conrad M. Fowler, Judge of Probate of Shelby County, Alabama; Wilbur Elisha Dearman, Judge of Probate of Sumter County, Alabama; William F. Killough, Judge of Probate of Talladega County, Alabama; Charles C. Adams, Judge of Probate of Tallapoosa County, Alabama; David M. Cochrane, Judge of Probate of Tuscaloosa County, Alabama; Nelson U. Allen, Judge of Probate of Walker County, Alabama; John G. Kimbrough, Judge of Probate of Washington County, Alabama; William Dannelly, Judge of Probate of Wilcox County, Alabama; and Loyd H. McDonald, Judge of Probate of Winston County, Alabama, take the necessary and appropriate action within the time prescribed by the laws of the State of Alabama to put into effect the apportionment of the Alabama Legislature as herein ordered. Said officials and each is separately and severally enjoined and restrained from taking any action that will hinder or obstruct, or tend to hinder or obstruct the effectuation of this Court's action in apportioning the Legislature of the State of Alabama as herein set out.

It is the further Order, Judgment and Decree of this Court that jurisdiction of this cause be and the same is hereby retained for the purpose of issuing any and all additional orders that may become necessary or appropriate in the judgment of this Court.

It is further Ordered that the United States Marshal for this district serve personally, or cause to be served personally, a copy of the opinion of this Court filed herein on July 21, 1962, and a copy of this order and decree, on each of the following:

[fol. 406] Bettye Frink, Secretary of State of the State of Alabama; John Grenier, Chairman of the Alabama State Republican Executive Committee; Perry O. Hooper, Secretary of the Alabama State Republican Executive Committee; Roy Mayhall, Chairman of the Alabama State Democratic Executive Committee; H. G. Rains, Secretary of the Alabama State Democratic Executive Committee; and MacDonald Gallion, Attorney General of the State of Alabama.

It is further Ordered that the United States Marshal for this district serve or cause to be served by certified mail a copy of the opinion of this Court entered herein on July 21, 1962, and a copy of this order and decree on the judge of probate for each county in the State of Alabama.

The costs incurred in this proceeding are hereby Ordered to be and they are taxed against the defendants, for which execution may issue.

Done, this the 25th day of July, 1962.

Richard T. Rives, United States Circuit Judge; Daniel H. Thomas, United States District Judge; Frank M. Johnson, Jr., United States District Judge.

[fol. 407]

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

NORTHERN DIVISION

Civil Action No. 1744-N

M. O. SIMS, FRED A. BEAM, WYLIE JOHNSON, G. R. SOUTHARD, MILES S. LEE, PAUL FRIEDMAN, WILLIAM LINDSAY WILLIAMS, WILLIAM P. SHAW, JR., PRENTICE W. THOMAS, RICHARD D. TANNEHILL, PAUL M. BYRNE, DAVID R. BAKER, CHARLES MORGAN, JR., and GEORGE PEACH TAYLOR, for themselves jointly and severally, and for all others similarly situated, Plaintiffs,

R. E. FARR, MARSHALL MEADOWS, JACK HOPPING, JACK RYAN, MAX W. MORGAN, DAVID J. VANN, ROBERT S. VANCE, RICHARD P. HUMPHREY, JR., JOSEPH W. MCCONNELL, JR., JOSEPH N. LANGAN, WILLIAM M. WILLIAMS, JR., and GARET VAN ANTWERP, Intervening Plaintiffs,

VS.

BETTYE FRINK, Secretary of State of the State of Alabama; HARRELL HAMMONDS, Judge of Probate of Lowndes County, Alabama; JOHN A. SANKEY, Judge of Probate of Montgomery County, Alabama; J. PAUL MEEKS, Judge of Probate of Jefferson County, Alabama; JOHN GRENIER, Chairman of the Alabama State Republican Executive Committee; PERRY O. HOOPER, Secretary of the Alabama State Republican Executive Committee; ROY MAYHALL, Chairman of the Alabama State Democratic Executive Committee; H. G. RAINS, Secretary of the Alabama State Democratic Executive Committee; MACDONALD GALLION, Attorney General of the State of Alabama, Defendants.

WRIT OF INJUNCTION—July 25, 1962

To:

Bettye Frink, Secretary of State of the State of Alabama,

John Grenier, Chairman of the Alabama State Republican Executive Committee,

Perry O. Hooper, Secretary of the Alabama State Republican Executive Committee,

Roy Mayhall, Chairman of the Alabama State Democratic Executive Committee,

H. G. Rains, Secretary of the Alabama State Democratic Executive Committee,

MacDonald Gallion, Attorney General of the State of Alabama,

James A. Rice, Judge of Probate of Autauga County, Alabama,

W. R. Stuart, Judge of Probate of Baldwin County, Alabama,

George Edward Little, Judge of Probate of Barbour County, Alabama,

G. H. Stacy, Judge of Probate of Bibb County, Alabama,

W. F. Maynor, Judge of Probate of Blount County, Alabama,

Fred D. Main, Judge of Probate of Bullock County, Alabama,

[fol. 408] James T. Beeland, Judge of Probate of Butler County, Alabama,

G. Clyde Brittain, Judge of Probate of Calhoun County, Alabama,

O. D. Alsobrook, Judge of Probate of Chambers County, Alabama,

Charles A. Formby, Judge of Probate of Cherokee County, Alabama,

Jerald Clark White, Judge of Probate of Chilton County, Alabama,

Richard Edwin McPhearson, Judge of Probate of Choctaw County, Alabama,

W. Cecil Johnson, Judge of Probate of Clarke County, Alabama,

G. W. Pruet, Judge of Probate of Clay County, Alabama,

Thomas Jefferson Baber, Judge of Probate of Cleburne County, Alabama,

J. Oscar English, Judge of Probate of Coffee County, Alabama,

M. Gresham Hale, Judge of Probate of Colbert County, Alabama,

Loyd G. Hart, Judge of Probate of Conecuh County, Alabama,

Mac Thomas, Judge of Probate of Coosa County, Alabama,

Leland G. Enzor, Judge of Probate of Covington County, Alabama,

John M. McSwean, Judge of Probate of Crenshaw County, Alabama,

Graf Hart, Judge of Probate of Cullman County, Alabama,

Kirke Adams, Judge of Probate of Dale County, Alabama,

Bernard A. Reynolds, Judge of Probate of Dallas County, Alabama,

J. Frank Croley, Judge of Probate of DeKalb County, Alabama,

W. M. (Willie) Cousins, Judge of Probate of Elmore County, Alabama,

Reo Kirkland, Judge of Probate of Escambia County, Alabama,

Wiley J. Hickman, Judge of Probate of Etowah County, Alabama,

Clyde C. Cargile, Judge of Probate of Fayette County, Alabama,

W. W. Weatherford, Judge of Probate of Franklin County, Alabama,

R. S. Ward, Judge of Probate of Geneva County, Alabama,

James Dennis Herndon, Judge of Probate of Greene County, Alabama,

Robert K. Greene, Judge of Probate of Hale County, Alabama,

Theodore R. Ward, Judge of Probate of Henry County, Alabama,

Carl E. Sellers, Judge of Probate of Houston County, Alabama,

Robert I. Gentry, Judge of Probate of Jackson County, Alabama,

J. Paul Meeks, Judge of Probate of Jefferson County, Alabama,

Victor C. Paul, Judge of Probate of Lamar County, Alabama,

Estes R. Flynt, Judge of Probate of Lauderdale County, Alabama,

Isaac Johnson, Jr., Judge of Probate of Lawrence County, Alabama,

Ira H. Weissinger, Judge of Probate of Lee County, Alabama,

Mason Clifton Freeman, Judge of Probate of Limestone County, Alabama,

Harrell Hammonds, Judge of Probate of Lowndes County, Alabama,

William Varner, Judge of Probate of Macon County, Alabama,

Ashford Todd, Judge of Probate of Madison County, Alabama,

R. J. Westbrook, Judge of Probate of Marengo County, Alabama,

Frank Pearce, Judge of Probate of Marion County, Alabama,

Jesse Epps Corbin, Judge of Probate of Marshall County, Alabama,

Vernol R. Jansen, Judge of Probate of Mobile County, Alabama,

Eugene T. Millsap, Judge of Probate of Monroe County, Alabama,

John A. Sankey, Judge of Probate of Montgomery County, Alabama,

T. C. Almon, Judge of Probate of Morgan County, Alabama,

David S. Lee, Judge of Probate of Perry County, Alabama,

R. B. Harris, Judge of Probate of Pickens County, Alabama,

Ben Reeves, Judge of Probate of Pike County, Alabama,

Stell Benefield, Judge of Probate of Randolph County, Alabama,

J. Shannon Burch, Judge of Probate of Russell County, Alabama,

Hoyt B. Hamilton, Judge of Probate of Saint Clair County, Alabama,

Conrad M. Fowler, Judge of Probate of Shelby County, Alabama,

Wilbur Elisha Dearman, Judge of Probate of Sumter County, Alabama,

William F. Killough, Judge of Probate of Talladega County, Alabama,

Charles C. Adams, Judge of Probate of Tallapoosa County, Alabama,

David M. Cochrane, Judge of Probate of Tuscaloosa County, Alabama,

Nelson U. Allen, Judge of Probate of Walker County, Alabama,

John G. Kimbrough, Judge of Probate of Washington County, Alabama,

William Dannelly, Judge of Probate of Wilcox County, Alabama, and

Loyd H. McDonald, Judge of Probate of Winston County, Alabama,

Take Notice that you and each of you, your successors in office, agents, servants, employees and persons acting on [fol. 409] your behalf, be and you are hereby Ordered and Enjoined as more particularly set out in the opinion of this Court made and filed herein on July 21, 1962, and in the order and decree of this Court made and entered herein on this date.

Done, this the 25th day of July, 1962.

R. C. Dobson, Clerk of the District Court of the United States for the Middle District of Alabama.

[fol. 410] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

NORTHERN DIVISION

[Title omitted]

NOTICE OF APPEAL OF B. A. REYNOLDS, ET AL. TO THE SUPREME COURT OF THE UNITED STATES—
Filed August 17, 1962

I. Notice is hereby given that B. A. Reynolds, Judge of Probate of Dallas County, Alabama, and Frank Pearce, Judge of Probate of Marion County, Alabama, two of the Probate Judges who as a class are defendants in the above entitled cause and against whom a decree was rendered herein, hereby appeal to the Supreme Court of the United States from the final judgment dated July 25, 1962, and [fol. 411] entered in this action on July 25, 1962, adjudging and decreeing certain statutes of the state of Alabama, relating to the reapportionment of the Legislature of Ala-

bama to be unconstitutional and void, and reapportioning the Legislature of Alabama by Judicial Decree, and in ordering and injoining these defendants and the other defendants from taking any action that would hinder or obstruct the Court's decree in apportioning the Legislature.

This appeal is taken pursuant to 28 United States Code, Section 1253.

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. Complaint with all amendments and all exhibits thereto.

2. All motions, answers, and other pleadings which have been filed, including this notice of appeal.

3. The transcript of the entire proceedings and evidence, both oral and written; at the trial of this cause.

4. All orders, opinions, and judgments of the three-judge district court including exhibits thereto.

III. The following questions are presented by this appeal:

(1) Does the three-judge district court have jurisdiction of this cause?

(2) Ought the three-judge district court to have exercised jurisdiction in this cause?

(3) Were the plaintiffs in this cause denied the equal protection of the law accorded them by the Fourteenth Amendment to the Constitution of the United States by the failure of the Legislature to reapportion itself on a strictly population basis?

(4) Does the present apportionment of both Houses of the Legislature of the State of Alabama (which apportionment is pursuant to Article 9, §§202 and 203 of the Constitu- [fol. 412] tion of Alabama of 1901 and §§1 and 2, Title 32, Code of Alabama) constitute "invidious discrimination" in

violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States?

(5) Is Act No. 93, Senate Bill 29; commonly referred to as the "67-Senator Amendment," proposing an amendment to the Constitution of Alabama relating to legislative apportionment as passed in the 1962 Special Session of the Legislature for the State of Alabama on July 12, 1962, an unconstitutional proposal within the meaning of the equal protection provisions of the Fourteenth Amendment to the Constitution of the United States?

(6) Should the Court declare invalid a proposed amendment to the Constitution of Alabama which by the act of the Legislature is to be submitted to the people of the state?

(7) Is a "little federal system" in a state legislature constitutional, or must both the senate and house be apportioned strictly according to population?

(8) Is the Act No. 91, House Bill 59, commonly referred to as the "Crawford-Webb Bill," passed in the 1962 Special Session of the Legislature and approved by the Governor of the State of Alabama on July 12, 1962, an unconstitutional Act within the meaning of the equal protection provisions of the Fourteenth Amendment to the Constitution of the United States?

(9) Is Act No. 93, Senate Bill 29 (commonly referred to as the "67-Senator Amendment") and Act No. 91, House Bill 59 (commonly referred to as the "Crawford-Webb Bill,") both having been passed by the 1962 Special Session of the Legislature for the State of Alabama, void, invalid and ineffective to the extent that they attempt to correct the denial of the plaintiffs' rights, said denial arising from the debasement of plaintiffs' votes in violation of the Equal [fol. 413] Protection Clause of the Fourteenth Amendment to the Constitution of the United States?

(10) Was the Court from the evidence in this cause justified in apportioning the Legislature of Alabama by Judicial Decree?

(11) Should the Court have apportioned the Legislature by Judicial Decree on a population basis as provided for

by Sections 199 and 200 of the Constitution of Alabama, 1901?

(12) Did the apportionment of the Legislature by Judicial Decree, deprive the parties who had been nominated in the Democratic Primary for seats in the Legislature of property rights without due process of law as preserved to them under the Fourteenth Amendment to the Constitution of the United States?

(13) Was the apportionment by Judicial Decree in this cause an equitable apportionment of the Legislature of Alabama?

(14) Were the persons who had been nominated in the Democratic Primary for seats in the Alabama Legislature necessary parties to this suit, and did the failure to make them parties in this cause deprive them of property rights preserved to them under the due process clause of the Fourteenth Amendment to the Constitution of the United States?

(15) Does Article IV of the Constitution of the United States prohibit a federal Court from asserting power and authority over a state legislature?

(16) How rapidly should the courts move to remedy legislature malapportionments?

(17) Does the Federal district Court have Constitutional power to reapportion the Legislature of Alabama?

(18) Does the Federal district Court have Constitutional power to give affirmative application to the Fourteenth Amendment to the Constitution of the United States?

(19) Does the Federal district Court have authority to take over the election machinery of the State of Alabama and direct an election to be held contrary to the procedure adopted under the laws of the State of Alabama?

Thomas G. Gayle, 1104½ Water Avenue, Selma, Alabama,

Counsel for B. A. Reynolds, Judge of Probate of Dallas County, Alabama, Defendant-Appellant.

[fol. 414] Joseph E. Wilkinson, Jr., The Peoples Bank & Trust Company Building, Selma, Alabama;

McLean Pitts, City National Bank Building, Selma, Alabama;

Rankin Fite, Hamilton, Alabama,

Counsel for Frank Pearce, Judge of Probate of Marion County, Alabama, Defendant-Appellant.

Certificate of Service (omitted in printing).

[fol. 416]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

NOTICE OF APPEAL (CROSS APPEAL) OF DAVID J. VANN, ET AL. TO THE SUPREME COURT OF THE UNITED STATES—Filed August 23, 1962

I

Notice is hereby given that David J. Vann and Robert S. Vance, individually and as Chairman and Vice-Chairman, respectively, of the Jefferson County Democratic Campaign Committee, who are intervener plaintiffs in the above-entitled cause, hereby take a separate or cross appeal to the Supreme Court of the United States from the decree made and entered on July 25, 1962, which said de-
[fol. 417] cree declared the present apportionment of the Legislature of Alabama to constitute invidious discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; declared that Acts Nos. 93 and 91, as passed in the 1962 Special Session of the Legislature for the State of Alabama, are unconstitutional within the meaning of the Fourteenth Amendment to the Constitution of the United States; ordered the provisional apportionment of the Legislature of the State of Alabama effective on the day after the general election to be held in November 1962, in ac-

cordance with the provisions of said decree; enjoined and ordered the defendants to take necessary and appropriate actions to put such apportionment into effect; and enjoined and restrained defendants from holding elections except in accordance therewith and from otherwise taking any action to hinder or obstruct the effectuation of such apportionment.

This appeal is taken pursuant to 28 United States Code, Section 1253.

II

The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. All items enumerated in the Notice of Appeal to the Supreme Court of the United States heretofore filed herein on behalf of B. A. Reynolds, Judge of Probate of Dallas County, Alabama, and Frank Pearce, Judge of Probate of Marion County, Alabama.

2. Without limitation of the foregoing, the following are specifically designated for inclusion in said transcript:

(a) Motion for Leave to Intervene heretofore filed herein by the undersigned intervening plaintiffs.

[fol. 418] (b) Motion for Leave to Amend Complaint in Intervention heretofore filed herein by the undersigned intervening plaintiffs.

(c) Joinder in Motion for Summary Judgment heretofore filed herein by the undersigned intervening plaintiffs.

(d) Motion for Rehearing and Modification of Proposed Decree heretofore filed herein by the undersigned intervening plaintiffs.

III

The following questions are presented by this appeal:

1. Did the District Court of three judges err in failing to apportion the Senate of the State of Alabama in a man-

ner which will comply with the requirements of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States?

2. Did the District Court of three judges err in failing to declare that the Fourteenth Amendment of the Constitution of the United States requires the apportionment of seats in the Senate of the State of Alabama as nearly as may be according to population?

3. Under the present distribution of population within the State of Alabama, according to the federal census of 1960, do the provisions of the Constitution of Alabama of 1901, and particularly of Sections 198, 199, 200 and 284 thereof, meet the requirements of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States?

David J. Vann, 2100 Comer Building, Birmingham, Alabama;

Robert S. Vance, 1703 Comer Building, Birmingham, Alabama;

C. H. Erskine Smith, First National Building, Birmingham, Alabama, Attorneys for Intervening Plaintiffs.

[fol. 419] Proof of Service

Certificate of Service (omitted in printing).

[fol. 419a]

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

NORTHERN DIVISION

Civil Action No. 1744-N

[Title omitted]

NOTICE OF APPEAL (CROSS APPEAL) OF JOHN W. McCONNELL, JR., ET AL. TO THE SUPREME COURT OF THE UNITED STATES

I

Notice Is Hereby Given that John W. McConnell, Jr., Joseph N. Langan, William M. Williams, Jr. and Garet [fol. 419b] Van Antwerp, who are Intervenor Plaintiffs in the above entitled cause, through their attorney of record, hereby take a separate or cross-appeal to the Supreme Court of the United States from the Decree made and entered by this honorable court on July 25, 1962, which said Decree declared the present apportionment of the Legislature of Alabama to constitute invidious discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; declared that Acts No. 91 and 93, as passed in the 1952 Special Session of the Legislature of the State of Alabama, are unconstitutional within the meaning of the Fourteenth Amendment to the Constitution of the United States; ordered the provisional apportionment of the Legislature of the State of Alabama effective on the day after the general election to be held in November, 1962, in accordance with the provisions of said Decree; enjoined and ordered the Defendants to take necessary and appropriate actions to put such apportionment into effect; and enjoined and restrained Defendants from holding elections except in accordance therewith and from otherwise taking any action to hinder or obstruct the effectuation of such apportionment.

This appeal is taken pursuant to 28 United States Code, Section 1253.

II

The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States and include in said transcript all items enumerated in the Notice of Appeal and in the Notice of Appeal (Cross-Appeal) to the Supreme Court of the United States heretofore filed herein on behalf of D. A. Reynolds and Frank Pierce, Appellants, and David J. Vann and Robert S. Vance, Cross-Appellants, respectively.

[fol. 419c]

III

The following questions are presented by this appeal:

1. Is the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution satisfied when representation in either house of a two-house state legislature is based on a factor or factors other than population?

2. Does not the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution require that representation in both houses of a two-house state legislature, i.e., the legislative system as a whole, be based on a reasonable or rational population basis?

3. Does not the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution require that each citizen of a state have equal representation in the legislative process as a whole, i.e., that representation in both houses of a two-house state legislature be based on a reasonable or rational population basis?

John W. McConnell, Jr., 1101 Merchants National Bank Building, Mobile, Alabama, Attorney for Intervening Plaintiffs.

Proof of Service (omitted in printing).

[fol. 424] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 425]

SUPREME COURT OF THE UNITED STATES

Nos. 508, 540 and 610—October Term, 1962

B. A. REYNOLDS, etc., et al., Appellants,

vs.

M. O. SIMS, et al.; DAVID J. VANN and ROBERT S. VANCE, Appellants,

vs.

BETTYE FRINK, Secretary of State of the State of Alabama, et al.; and JOHN W. McCONNELL, JR., et al., Appellants,

vs.

BETTYE FRINK, Secretary of State of Alabama, et al.

Appeals from the United States District Court for the Middle District of Alabama.

ORDER NOTING PROBABLE JURISDICTION—June 10, 1963

The statements of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the cases are consolidated and a total of two hours is allowed for oral argument.

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JOHN F. DAVIS, CLERK

Supreme Court of the United States

OCTOBER TERM, 1962.

No. [redacted] 23

B. A. REYNOLDS, AS JUDGE OF PROBATE OF DALLAS COUNTY, ALABAMA AND FRANK PEARCE, AS JUDGE OF PROBATE OF MARION COUNTY, ALABAMA,

Appellants,

versus

M. O. SIMS, FRED A. BEAM, WYLIE JOHNSON, G. R. SOUTHARD, MILES S. LEE, PAUL FRIEDMAN, WILLIAM LINDSAY WILLIAMS, WILLIAM P. SHAW, JR., PRENTICE W. THOMAS, RICHARD D. TANNEHILL, PAUL M. BYRNE, DAVID R. BAKER, CHARLES MORGAN, JR., AND GEORGE PEACH TAYLOR AND OTHERS SIMILARLY SITUATED, ET AL.,

Appellees.

On Appeal from the United States District Court for the Middle District of Alabama, Northern Division.

JURISDICTIONAL STATEMENT.

THOMAS G. GAYLE,
1104½ Water Avenue,
Selma, Alabama,
JOSEPH E. WILKINSON, JR.,
310 Broad Street,
Selma, Alabama,
McLEAN PITTS,
15 Broad Street,
Selma, Alabama,
RANKIN FITE,

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IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1962.

No. .....

B. A. REYNOLDS, AS JUDGE OF PROBATE OF DALLAS COUNTY, ALABAMA AND FRANK PEARCE, AS JUDGE OF PROBATE OF MARION COUNTY, ALABAMA,

Appellants,

versus

M. O. SIMS, FRED A. BEAM, WYLIE JOHNSON, G. R. SOUTHARD, MILES S. LEE, PAUL FRIEDMAN, WILLIAM LINDSAY WILLIAMS, WILLIAM P. SHAW, JR., PRENTICE W. THOMAS, RICHARD D. TANNEHILL, PAUL M. BYRNE, DAVID R. BAKER, CHARLES MORGAN, JR., AND GEORGE PEACH TAYLOR AND OTHERS SIMILARLY SITUATED, ET AL.,

Appellees.

On Appeal from the United States District Court for the Middle District of Alabama, Northern Division.

JURISDICTIONAL STATEMENT.

Appellants, B. A. Reynolds, as Judge of Probate of Dallas County, Alabama, and Frank Pearce, as Judge of Probate of Marion County, Alabama, two of the probate judges who as a class were defendants in the Court

below and against whom a decree was rendered, appeal from the judgment of the three-judge United States District Court of the Middle District of Alabama, Northern Division, entered on July 25th, 1962, adjudging and decreeing certain statutes of the State of Alabama, relating to the reapportionment of the Legislature of Alabama to be unconstitutional and void, and reapportioning the Legislature of Alabama by Judicial Decree, and in ordering and enjoining these appellants and the other defendants in said suit from taking any action that would hinder or obstruct the Court's decree in apportioning the Legislature, and appellants submit this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW.

The opinion of the District Court for the Middle District of Alabama, Northern Division, is not yet reported. Copies of the opinion, findings of fact, conclusions of law and all judgments of said Court entered in the cause are attached hereto as Appendix I.

JURISDICTION.

(a) This suit was brought under U. S. C. Title 42, Sections 1983, 1988 and 28 U. S. C. Section 1343 (3) and Section 2281 to have certain statutes and acts of the Legislature relating to the reapportionment of the Legislature of Alabama declared unconstitutional, and for injunctive relief. The judgment of the District Court was entered on July 25th, 1962 and notice of

appeal was filed in that Court on August 17th, 1962. The jurisdiction of the Supreme Court by direct appeal is conferred by Title 28, U. S. C., Sections 1253 and 2101; also Section 2281.

(b) The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Palmetto Fire Ins. Co. v. Conn.*, 272 U. S. 295, 47 S. Ct. 88; *Oklahoma Gas and Electric Co. v. Oklahoma Packing Co.*, 292 U. S. 386, 54 S. Ct. 732; *Ex parte Public National Bank*, 278 U. S. 101, 49 S. Ct. 43; *Ex parte Collins*, 277 U. S. 565, 48 S. Ct. 585.

QUESTIONS PRESENTED.

1. Ought the three-judge District Court to have exercised jurisdiction in this cause?

2. Were the appellees in this cause denied the equal protection of the law accorded them by the Fourteenth Amendment to the Constitution of the United States by the failure of the Legislature to reapportion itself on a strictly population basis?

3. Does the present apportionment of both Houses of the Legislature of the State of Alabama (which apportionment is pursuant to Article 9, §§ 202 and 203 of the Constitution of Alabama of 1901 and §§ 1 and 2, Title 32, Code of Alabama) constitute "invidious discrimination" in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States?

4. Is a "little federal system" in a state legislature constitutional, or must both the senate and house be apportioned strictly according to population?

5. Should the Court have declared invalid a proposed amendment to the Constitution of Alabama which by the act of the Legislature is to be submitted to the people of the state?

6. Is Act No. 93, Senate Bill 29, commonly referred to as the "67-Senator Amendment", proposing an amendment to the Constitution of Alabama relating to legislative apportionment as passed in the 1962 Special Session of the Legislature for the State of Alabama on July 12, 1962, an unconstitutional proposal within the meaning of the equal protection provisions of the Fourteenth Amendment to the Constitution of the United States?

7. Is the Act No. 91, House Bill 59, commonly referred to as the "Crawford-Webb Bill", passed in the 1962 Special Session of the Legislature and approved by the Governor of the State of Alabama on July 12, 1962, an unconstitutional Act within the meaning of the equal protection provisions of the Fourteenth Amendment to the Constitution of the United States?

8. Was the Court from the evidence in this cause justified in apportioning the Legislature of Alabama by Judicial Decree?

9. Was the apportionment by Judicial Decree in this cause an equitable apportionment of the Legislature of Alabama?

10. Does Article IV of the Constitution of the United States prohibit a Federal Court from asserting power and authority over a state legislature?

11. How rapidly should the Courts move to remedy Legislature malapportionments?

12. Does the Federal District Court have Constitutional power to reapportion the Legislature of Alabama by affirmative action?

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED.

The following Sections of the Alabama Constitution of 1901 prescribe the number of members of the Senate and House of Representatives of the Legislature of Alabama and method of apportioning the members of the Legislature among the Counties of the State:

> Section 50. The Legislature shall consist of not more than thirty-five Senators, and not more than one hundred and five members of the House of Representatives, to be apportioned among the several districts and counties as prescribed in this Constitution; provided that in addition to the above number of Representatives each new county hereafter created shall be entitled to one Representative.

Section 197. The whole number of Senators shall be not less than one-fourth, or more than one-third of the whole number of Representatives.

Section 198. The House of Representatives shall consist of not more than one hundred and five members unless new counties shall be created, in which event each new county shall be entitled to one representative. The members of the House of Representatives shall be apportioned by the Legislature among the several counties of the State, according to the number of inhabitants in them respectively, as ascertained by the decennial census of the United States, which apportionment when made shall not be subject to alteration until the next session of the Legislature after the next decennial census of the United States shall have been taken.

Section 199. It shall be the duty of the Legislature at its first session after the taking of the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the number of Representatives, and apportion them among the several counties of the state, according to the number of inhabitants in them respectively; provided, that each county shall be entitled to at least one Representative.

Section 200. It shall be the duty of the Legislature at its first session after taking the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the number of Senators and to divide the State into as many Senatorial districts as there are Senators, which

districts shall be as nearly equal to each other in the number of inhabitants as may be, and each shall be entitled to one Senator, and no more; and such districts when formed, shall not be changed until the next apportioning session of the Legislature, after the next decennial census of the United States shall have been taken; provided, that counties created after the next preceding apportioning session of the Legislature may be attached to Senatorial districts. No county shall be divided between two districts, and no district shall be made up of two or more counties not contiguous to each other.

Section 201. Should any decennial census of the United States not be taken, or if when taken, the same, as to this state, be not full and satisfactory, the Legislature shall have power at its first session after the time shall have elapsed for the taking of said census, to provide for an enumeration of all the inhabitants of this State, upon which it shall be the duty of the Legislature to make the apportionment of Representatives and Senators as provided for in this article.

Section 284. . . . Representation in the Legislature shall be based upon population, and such basis of representation shall not be changed by constitutional amendment.

Sections 42 and 43 of Art. 3 of the Constitution of 1901 and Section 44 of Art. 4 read as follows:

Section 42. The powers of the government of the State of Alabama shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit:

Those which are legislative, to one; those which are executive, to another; and those which are judicial, to another.

Section 43. In the government of this state, except in the instances in this Constitution hereinafter expressly directed or permitted, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end that it may be a government of laws and not of men.

Section 44. The legislative power of this state shall be vested in a legislature, which shall consist of a senate and a house of representatives.

All of the foregoing appear in Volume One of the Alabama Code of 1940.

The following statutes were declared unconstitutional in this suit:

Act Number 93, Senate Bill 29, commonly referred to as the "67-Senator Amendment" propose an amendment to the Constitution of Alabama relating to Legislative apportionment as passed in the 1962 Special Session of the Legislature of Alabama, which reads as follows:

An Act, proposing an amendment to the Constitution of Alabama relating to legislative apportionment. BE IT ENACTED BY THE LEGISLATURE OF ALABAMA: *Section 1.* The following amendment to the Constitution of Alabama 1901 is pro-

posed and shall become valid as a part thereof when approved and proclaimed as prescribed by law: *Proposed Amendment 1.* The Legislature of Alabama shall consist of a senator for each county and 106 members of the house of representatives, to be apportioned among the several counties as herein prescribed; provided, that in addition to the above number of representatives each new county hereafter created shall be entitled to at least one representative. 2. At the general election in 1966, and every four years thereafter, a senator shall be elected by the qualified electors of each county in the state. 3. At the general election in 1966, and every four years thereafter, until the house of representatives is reapportioned as herein provided, the qualified electors of each county in the state shall elect such number of representatives as may be apportioned to the county as follows: The County of Jefferson shall have and elect seventeen representatives; the county of Mobile shall have and elect eight representatives; the county of Montgomery shall have and elect four representatives; the counties of Calhoun, Etowah, Madison and Tuscaloosa shall each have and elect three representatives; the counties of Dallas, Lauderdale, Morgan, Talladega and Walker shall each have and elect two representatives; and the remaining counties of the state shall each have and elect one representative. 4. On the first day, or within one week thereafter, of the regular session of the legislature in 1971, and every fifth regular session thereafter, the clerk of the house of representatives shall transmit to the secretary of state a statement showing the whole number of persons in each county under the most recent decennial census of the

United States, and the number of representatives to which each county will be entitled under an apportionment of the then existing number of representatives by the method known as the method of equal proportions, no county to receive less than one representative. 5. In Section 284 of this Constitution as amended, strike out the last sentence thereof and insert the following sentence: Representation in the house of representatives of the legislature shall be based upon population. 6. Article IX (sections 197-203) of this Constitution is hereby expressly repealed. *Section 2.* An election upon the proposed amendment is ordered to be held on the date of the general election next succeeding the final adjournment of the current session of the Legislature. The election shall be held in accordance with the provisions of Sections 284 and 285 of the Constitution of Alabama, as amended, and Chapter 1, Article 18, Title 17 of the Code of Alabama 1940. *Section 3.* Notice of the election and of the proposed amendment shall be given by proclamation of the Governor, which proclamation shall be published once a week for four successive weeks next preceding the day appointed for the election in a newspaper in each county of the State. In every county in which no newspaper is published, a copy of the notice shall be posted at each courthouse and post office.

Act Number 91, House Bill 59, commonly referred to as the "Crawford-Webb Bill" passed in the 1962 Special Session of the Legislature of Alabama and approved by the Governor of the State of Alabama on July 12th, 1962 is as follows:

An Act, to fix the number of senators and representatives in the legislature, divide the state into senatorial districts, and apportion the senators and representatives among the several districts and counties.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. The senate of the legislature shall be composed of 35 senators representing 35 senatorial districts, each district to elect one senator and no more.

Section 2. The state is hereby divided into 35 senatorial districts as follows:

First, the counties of Lauderdale and Limestone; second the counties of Lawrence and Morgan; third, the counties of Cullman and Winston; fourth, the county of Madison, fifth, the counties of Jackson and Marshall; sixth, the county of Etowah; seventh, the county of Calhoun; eighth, the county of Talladega; ninth, the counties of Randolph and Chambers; tenth, the counties of Elmore and Tallapoosa; eleventh, the county of Tuscaloosa; twelfth, the counties of Fayette and Walker; thirteenth, the county of Jefferson; fourteenth, the counties of Pickens and Lamar; fifteenth, the counties of Autauga, Chilton and Shelby; sixteenth, the counties of Monroe and Wilcox; seventeenth, the counties of Butler, Covington and Conecuh; eighteenth, the counties of Bibb and Perry; nineteenth, the counties of Clarke, Choctaw and Washington; twentieth, the counties of Marengo and Sumter; twenty-first, the counties of Baldwin and Escambia; twenty-second, the counties of Blount

and St. Clair; twenty-third, the counties of Dale and Geneva; twenty-fourth, the counties of Barbour and Pike; twenty-fifth, the counties of Coffee and Crenshaw; twenty-sixth, the counties of Bullock and Macon; twenty-seventh, the counties of Lee and Russell; twenty-eighth, the county of Montgomery; twenty-ninth, the counties of Cherokee and DeKalb; thirtieth, the counties of Dallas and Lowndes; thirty-first, the counties of Colbert, Franklin and Marion; thirty-second, the counties of Greene and Hale; thirty-third, the county of Mobile; thirty-fourth, the counties of Coosa, Clay and Cleburne; thirty-fifth, the counties of Henry and Houston. In districts consisting of more than one county, the senators shall not be elected for more than one term consecutively from any one county in the district, but shall reside in and be elected alternately and in turn from each of the counties within such district. The first senator to be elected in such district shall reside in the county having the largest population, except where that county had the last preceding senator. It is provided, however, that any senator in office on the effective date of this enactment shall be eligible to succeed himself as a member of the Senate, any other provision of this paragraph to the contrary notwithstanding.

Section 3. The house of representatives of the legislature shall consist of 106 members distributed among the several counties of the state as follows:

The county of Jefferson shall have and elect 12, the county of Mobile 6, and the county of Montgomery 4, the counties of Calhoun, Etowah, Madison and Tuscaloosa 3 each, the counties of Bald-

win, Colbert, Cullman, Dallas, Houston, Lauderdale, Lee, Marshall, Morgan, Russell, Talladega and Walker 2 each, and the remaining counties 1 each.

Section 4. This Act shall take effect for the election of senators and representatives at the general election to be held in November, 1966, and shall be effective thereafter until the legislature is reapportioned according to law.

Section 5. The provisions of this Act are severable. If any part of this Act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

Also Sections 1 and 2 of Title 32 of the 1940 Code of Alabama which are as follows:

(1) *House of Representatives.* The house of representatives of the legislature consists of one hundred and six members, distributed among the several counties as follows; The counties of Autauga, Baldwin, Bibb, Blount, Cherokee, Chilton, Choctaw, Clay, Cleburne, Coffee, Colbert, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dale, DeKalb, Escambia, Fayette, Franklin, Geneva, Greene, Houston, Lamar, Lawrence, Limestone, Macon, Marion, Marshall, Monroe, Pickens, Randolph, Shelby, St. Clair, Washington, and Winston shall each elect one representative. The counties of Barbour, Bullock, Butler, Calhoun, Chambers, Clarke, Elmore, Etowah, Hale, Henry, Jackson, Lauderdale, Lee, Lowndes, Madison, Marengo, Morgan, Perry, Pike, Russell, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker and Wilcox shall each elect two representatives. The counties of Dallas and Mobile shall each elect three repre-

sentatives. The county of Montgomery shall elect four representatives; and the county of Jefferson shall elect seven representatives.

(2) *Senatorial Districts.* The senate of the legislature shall consist of thirty-five members, and the state is divided into thirty-five senatorial districts, as follows: First, Lauderdale and Limestone; second, Lawrence and Morgan; third, Blount, Cullman and Winston; fourth, Madison; fifth, Jackson and Marshall; sixth, Etowah and St. Clair; seventh, Calhoun; eighth, Talladega; ninth, Chambers and Randolph; tenth, Tallapoosa and Elmore; eleventh, Tuscaloosa; twelfth, Fayette, Lamar and Walker; thirteenth, Jefferson; fourteenth, Pickens and Sumter; fifteenth, Autauga, Chilton and Shelby; sixteenth, Lowndes; seventeenth, Butler, Conecuh, and Covington; eighteenth, Bibb and Perry; nineteenth, Choctaw, Clarke and Washington; twentieth, Marengo; twenty-first, Baldwin, Escambia and Monroe; twenty-second, Wilcox; twenty-third, Dale and Geneva; twenty-fourth, Barbour; twenty-fifth, Coffee, Crenshaw, and Pike; twenty-sixth, Bullock and Macon; twenty-seventh, Lee and Russell; twenty-eighth, Montgomery; twenty-ninth, Cherokee and DeKalb; thirtieth, Dallas; thirty-first, Colbert, Franklin and Marion; thirty-second, Greene and Hale; thirty-third, Mobile; thirty-fourth, Clay, Cleburne and Coosa; thirty-fifth, Henry and Houston.

The following federal statutes are involved:

U.S.C., Title 42, Sections 1983, 1988 and 1343 are as follows:

"Section 1983. Civil action for deprivation of rights. Every person who, under color of any

statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in any action at law, suit in equity or other proper proceeding for redress."

"Section 1988. Proceedings in vindication of civil rights. The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, . . ."

"Section 1343. Civil rights.

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:—

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom, or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."

STATEMENT.

The appellees, as individuals and as voters and taxpayers of the State of Alabama, on their behalf and others similarly situated, sued Bettye Frink, as Secretary of State of the State of Alabama, the sixty-seven Probate Judges of the State, and other officials who

are charged by law with performing and exercising certain duties and powers in connection with the nomination and election of the members of the Alabama Legislature. The suit alleged a denial of the equal protection of the law as preserved under the Fourteenth Amendment to the Constitution of the United States because of the failure of the Legislature of Alabama to reapportion legislative districts on the basis of population as provided by the State Constitution. Included among the defendants in the suit are the appellants, B. A. Reynolds as Judge of Probate of Dallas County, Alabama and Frank Pearce as Judge of Probate of Marion County, Alabama, who are charged with certain duties pertaining to the nomination and election of members of the Legislature from their respective counties.

Appellees in their said suit prayed for a declaration of rights pursuant to 28 U. S. C. Sec. 2201 and that the apportionment of the Legislature as established under Secs. 1 and 2 of Title 32 of the Alabama Code of 1940, as amended and Secs. 202 and 203 of Article 9 of the Constitution of Alabama 1901 be declared void and invalid as being contrary to the duty of the State of Alabama to reapportion the Legislature, and because of the failure to reapportion the Legislature in accordance with the present population of the state; that each of the defendants named in the complaint who had duties to perform in connection with the nomination and election of members of the Legislature be enjoined and restrained from exercising such duties until such time as the Legislature of Ala-

bama reapportions itself in accordance with the applicable provisions of the Constitution of Alabama; they further prayed that the Court should require the next primary and general elections for members of the Alabama Legislature be held on an at-large basis.

On March 29th, 1962, appellees filed a motion for preliminary injunction praying that the defendants be enjoined from failing or refusing to prepare the necessary ballots to be used in the Democratic Primary Election in May, and in the general election in November, 1962, in such a manner as would require the election of members of both the House of Representatives and the Senate of the State of Alabama on an at-large basis, and to take whatever further action was necessary to insure that all candidates for party nomination for election to the Legislature run at large throughout the State.

By its order dated March 30th, 1962, the application for interlocutory injunction was assigned for hearing on April 14th, 1962 and was thereafter continued until July 16th, 1962. In the order dated April 14th, 1962 the Court made the following remarks:

> "We remain of the same opinion that was expressed in the order setting the application for hearing, viz: until the Legislature has had a further reasonable but prompt opportunity to comply with its duty under Sections 199 and 200 of the Constitution of Alabama, this Court should take no action not absolutely essential for the protection of the constitutional rights asserted in

the complaint; and no ruling before the primary elections of May 1962 appears essential.

"The application for interlocutory injunction pertains to the conduct of both the primary elections of May 1962 and the general election of November 1962. That application is therefore continued and re-set for hearing at 10 o'clock a.m. on Monday, July 16, 1962. The hearing cannot be set for a much later date because, if this Court is to act effectively, some action must be taken in ample time before the general election of November 1962.

"For the guidance of counsel and for such aid as we may be in solving the troublesome but important subject of this litigation, we make the following additional remarks:

"(1) Under the opinion of the Supreme Court of the United States in *Baker v. Carr*, No. 6, October Term, 1961, decided March 26, 1962, it seems clear to us that: (a) this Court has jurisdiction of the present action; (b) the complaint as amended states a justiciable cause of action; (c) the plaintiffs have standing to challenge the Alabama apportionment statutes."

On June 28th, 1962 the appellees amended their complaint by asking in their prayer for relief that the Court enter an order provisionally reapportioning the house of representatives of Alabama and provisionally redistricting the senate of Alabama and in such order start with existing apportionment of the members of the house of representatives and existing senatorial districts, alter or consolidate some of them, and award the seats thus released to those counties suffering

discrimination. On the same day certain intervening plaintiffs amended the prayer for relief in their complaint by asking the Court to require that the members of the house of representatives of the State of Alabama be elected in the November general elections according to a plan which they submitted to the Court in their amendment.

After the Court's order of March 29th, 1962, the Governor of Alabama called a special session of the Legislature to consider reapportioning the legislature of Alabama and on July 12th, 1962 the legislature passed a proposed constitutional amendment, commonly referred to as the "67-Senator Amendment", this proposed constitutional amendment being subject to ratification of the voters of Alabama in an election to be held in November, 1962. On the same date the Governor of Alabama signed into law the "Crawford-Webb Bill", which was to take effect in the event the voters of Alabama refused to ratify the proposed "67-Senator Amendment". Both of these acts provided for the reapportionment of the legislature of the state of Alabama. Some nine days later and on July 21st, 1962 the District Court filed its opinion in this case, and on July 25th, 1962, thirteen days after the passage of said reapportionment statutes by the Alabama legislature, filed its decree in this case, and declared said statutes unconstitutional and by its decree proceeded to reapportion the legislature of Alabama.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL.

The suit in this case is patterned after the suit brought by voters of the state of Tennessee and decided by this Court in *Baker v. Carr*, 82 S. Ct. 691. In the Tennessee case the plaintiffs, as in this case, claimed that they were denied the equal protection of the law accorded them by the Fourteenth Amendment to the Constitution of the United States by virtue of the disbasement of their vote. A three judge District Court dismissed the complaint and held that it lacked jurisdiction of the subject matter. On appeal in *Baker v. Carr* this Court reversed the case and held that the District Court did have jurisdiction and remanded the case for trial. Mr. Justice Brennan delivered the opinion of the Court and Mr. Justice Douglas, Mr. Justice Clark and Mr. Justice Stewart wrote concurring opinions, Mr. Justice Frankfurter and Mr. Justice Harlan Dissented.

As pointed out by Mr. Justice Stewart in his concurring opinion on p. 736:

> "The Court today decided three things and no more:
>
> "'(a) that the court possessed jurisdiction of the subject matter; (b) that a justiciable cause of action is stated upon which appellants would be entitled to appropriate relief; and (c) * * * that the appellants have standing to challenge the Tennessee apportionment statutes.' p. 699.
>
> "The complaint in this case asserts that Tennessee's system of apportionment is utterly ar-

bitrary—without any possible justification in rationality. The District Court did not reach the merits of that claim, and this Court quite properly expresses no view on the subject. Contrary to the suggestion of my Brother HARLAN, the Court does not say or imply that 'state legislatures must be so structured as to reflect with approximate equality the voice of every voter.' p. 772. The Court does not say or imply that there is anything in the Federal Constitution 'to prevent a State, acting not irrationally, from choosing any electoral legislative structure it thinks best suited to the interests, temper, and customs of its people.' p. 773. And contrary to the suggestion of my Brother DOUGLAS, the Court most assuredly does not decide the question, 'may a State weigh the vote of one county or one district more heavily than it weighs the vote in another?'" p. 724.

The factual situation considered by the Court in *Baker v. Carr* is different from the one considered by the District Court in this case in the following respects.

Under the Tennessee Constitution, (Secs. 5 and 6) the apportionment of the house and senate was to made among the several counties or districts according to the number of qualified voters in each.

In Alabama the apportionment of the legislature is based on a population rather than a voter basis, and the number of seats in the house are limited to 106 and each one of the 67 counties of the state is entitled to at least one representative. Sections 197, 198 and

199 Alabama Constitution 1901. The apportionment of the state senate is limited to 35 senators and is divided into senatorial districts according to population and the constitution provides that "no county shall be divided into two districts, and no district shall be made up of two or more counties not contiguous to each other." Sec. 200 of the Constitution of Alabama 1901.

Unlike the Tennessee Legislature which had not acted on reapportionment since the year, 1901, the Alabama Legislature while this suit was pending in an extraordinary session called by the Governor passed two acts, one of which was Act Number 93, Senate Bill 29, commonly referred to as the "67-Senator Amendment". This act proposed an amendment to the Constitution of Alabama relating to legislative apportionment which was to be submitted to a vote of the people and was declared by the lower Court to be an unconstitutional proposal within the meaning of the Equal Protection Provisions of the Fourteenth Amendment to the Constitution of the United States.

The other act being Act Number 91, House Bill 59, commonly referred to as the "Crawford-Webb Bill", was likewise declared by the District Court to be an unconstitutional act within the meaning of the Equal Protection Clause of the Constitution.

Both of said acts were declared to be, "void, invalid, and ineffective to the extent that they attempt to

correct the denial of plaintiffs' rights, said denial arising from the debasement of plaintiffs' votes in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of Alabama." unconstitutional, in our opinion both of said acts were constitutional and valid reapportionment acts of the Legislature as we will subsequently point out in this statement.

While the Court declared both of the aforesaid acts

After declaring said acts unconstitutional, the lower Court then assumed the duties of the Legislature, mapped the political structure of the state, and apportioned the Legislature by Judicial Decree according to its own views, all of which was hurriedly done in a period of some thirteen days.

In Alabama nomination in the Democratic Primary is tantamount to election, and the District Court's Decree reapportioning the Legislature was entered subsequent to the Democratic Primary in May and prior to the General Election to be held in November, 1962.

In *Baker v. Carr*, the District Court was not called on to "re-map" the state, or to hurriedly provide relief in the face of an impending election, and in that case appellants suggested a step-by-step approach, which did not involve an assumption by the District Court of legislative duties or responsibilities. (taken from page 20 of appellant's brief in *Baker v. Carr*.)

Should the Court have declared invalid a proposed amendment to the Constitution of Alabama which by the act of the legislature was to be submitted to a vote of the people of the state?

The proposed 67-Senator Act which was to be submitted to a vote of the people of the state was framed after the Federal System of government—namely one senator in each county of the state. The District Court in its decree accepted as completely satisfactory the provisions of this act as it relates to House reapportionment by the method of equal proportion. We will therefore discuss the merit of the 67-Senator Amendment as it relates to senatorial redistricting.

It is at once essential to recognize the basic issue involved here. It relates solely to the right of a state to structure its Legislature in accordance with provisions which it considers in the best interest of the state at large.

In declaring the proposed 67-Senator Amendment invalid, the District Court concluded as a matter of law that the people of this state cannot by Constitutional amendment or by Constitutional convention alter the basic structure of its Legislature. If unit representation in the Senate is invidious *per se*, then it would be futile to resort to convention to so provide.

In at least nine states today county or town units are given equal representation in the Legislative branch regardless of the number of each unit's inhabitants.

Among fourteen states it is required that there be one Senator for each district or else limit a district to one Senator.

There are twenty states in which each county or town unit is entitled to one representative in the Lower House. See Appendix 2 hereto attached.

If the 67-Senate provision is not invidious *per se*, can it be said that it is invidious as being based on no rational policy? In this connection we would point out that there is nothing in the Federal Constitution to prevent a state acting not irrationally from choosing any electorial Legislative structure it thinks best suited to the interest, temper, and customs of its people. *McDougall v. Green*, 335 U. S. 281, in which the Court observed that to "assume that political power is a function exclusively of numbers is to disregard the practicalities of government, and reaffirmed by *South v. Peters*, 339 U. S. 276.

It may be said that it results in gross inequality but even gross inequality may be justified if based upon a permissible state policy and is not arbitrarily and capriciously applied.

If it can be determined that the 67-Senate Amendment rests upon a permissible policy the function of the Federal judiciary ends upon such determination. We refer to Appendix 4 indicating the manner in which seven counties characterized by industrialization and fifty per cent or better of their population is

represented by single or contiguous cities. It is submitted that such concentration of Legislative power into the hands of the industrial community of this state to the extent of forty-one representatives represents a potential power of control in the House of Representatives such as to prevent submission of Constitutional amendments to the people. The power thus represented when exercised as a "stranglehold" can be sufficiently disruptive and obstructive as to prevent, if not in fact control, the distribution of revenues and the removal of agricultural tax exemptions to the detriment of all the people of Alabama.

Unless the people of Alabama are permitted to structure their Legislature in a manner to provide protection from the domination of a handful of cities, then the Court has as a matter of law asserted final authority and control over matters which properly should remain for Legislative and not judicial determination.

The Supreme Court of Alabama in Opinion of Justices 61 So. 2d 881, (1955), by a divided Court, held that notwithstanding the provisions of 284 of the Constitution the people could "legally and lawfully remove any provision from the Constitution which they previously put in or ratified, even to the extent of amending or repealing one of the sections comprising our Declaration of Rights, even though it is provided that they 'shall forever remain inviolate.'"

It is respectively submitted that the 67-Senator Act was a valid and constitutional act of the Legislature and should be submitted to a vote of the people.

Should the District Court have declared unconstitutional the Crawford-Webb Act of the Legislature?

With *Baker v. Carr* in mind, let us now examine the method of apportionment of the Alabama Legislature employed in this act.

It will be observed by reference to Appendix 3, hereto attached, that the House apportionment provided by the Crawford-Webb Act is the method of smallest divisors with this minor exception two seats, which would ordinarily be apportioned to Jefferson County and one seat which would ordinarily be apportioned to Mobile County, have instead been apportioned one each to Russell, Cullman and Colbert Counties.

While the method of apportionment employed in the Crawford-Webb Act is not stated in the act, nor need it have been so stated, it is nevertheless obvious. The classifications used were reasonable, logical, rational and were designed to carry out unquestioned state policy of allocating State Legislative power in a manner to prevent unwholesome concentration of power. The population classifications upon which the Crawford-Webb Act is based, are as follows:

After providing one representative to each county, as provided for in the Constitution, the balance of

thirty-nine House seats were apportioned according to population by classification:

Counties 45,000— 90,000	1 additional seat
Counties 90,000—150,000	2 additional seats
Counties 150,000—300,000	3 additional seats
Counties 300,000—600,000	5 additional seats
Counties 600,000 and over	11 additional seats

An apportionment based on the method of smallest divisors is an apportionment by known and accepted standards and even though biased in favor of small counties, such bias is consistent with and in furtherance of unquestioned state policy. This policy is clearly indicated by the separate provision of the Alabama Constitution designed to protect the small counties by the original apportionment of one to each county and by the additional provision of the Constitution limiting one county to a single Senatorial district.

Disparities in population as may appear are inherent in any and all mathematical methods of apportionment. The sole question is the degree of disparity and whether or not such disparity can be justified on the basis of state policy, and thus avoid the onus of invidiousness.

The minor deviations in the Crawford-Webb Act from an apportionment under the method of smallest divisors is justified and equitable and based upon legislative judgment concerning the best method of guaranteeing protection against concentration of political power in the Alabama Legislature.

Many states are apportioned under provisions which put definite limitations upon the number of Representatives, of Senators, as the case may be, from any one political unit. We refer the Court to the dissenting opinion of Justice Frankfurter in *Baker v. Carr*, in which a tabulation in made from the *Book of the States 1962-63* of apportionment methods previously employed throughout the United States.

What is involved in this suit is an abstract question of political power concerning the structure and organization of the Alabama Legislature. It would be utterly impossible to argue the wisdom of the state policy with respect to allocation of power without making of the Court a forum for political debate.

Test for Invidiousness.

While the United States Supreme Court may not have established guide lines in some respects, it seems to us that it did speak clearly in *Baker v. Carr* on the following points:

1. That gross population variations are not invidious *per se*.

2. That such discriminations are not invidious if they can be shown to conform to a rational state policy designed to protect the rural interests of the state from domination by other segments of the economy.

3. That to constitute "invidiousness" any discrimination based on population must equate "no policy" or else be totally irrational as to defy any

conceivable state of facts upon which to justify the discrimination.

It is respectively submitted that when the above test is applied the Crawford-Webb Act was a valid and constitutional act of the Legislature and should not have been declared unconstitutional by the District Court.

Many questions are presented in this case which were not considered by the Court in *Baker v. Carr*. More is involved here than the rights of parties litigant. The very foundation of State Government is at stake. If this decision is allowed to stand, then the State of Alabama and its sister states are not sovereign states. We believe that substantial questions of public importance are presented in this case. The questions presented are substantial. The Court should grant oral argument to the end that the judgment of the lower Court be reversed and pertinent Alabama Statutes be held constitutional and valid.

Respectfully submitted,

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Attorneys for Appellants.

I, Thomas G. Gayle, one of the attorneys for the Appellants, B. A. Reynolds, as Judge of Probate of Dallas County, Alabama, and Frank Pearce, as Judge of Probate of Marion County, Alabama, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 10. day of October, 1962, I served copies of the foregoing Jurisdictional Statement on the several Appellees thereto, by mailing copies in duly addressed envelopes, with first class postage, prepaid, to their respective attorneys of record as follows:

Charles Morgan, Jr.,
1512 Comer Building,
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George Peach Taylor,
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Thomas G. Gayle

THOMAS G. GAYLE,
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APPENDIX No. 1.

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION.

CIVIL ACTION No. 1744-N.

M. O. SIMS, FRED A. BEAM, WYLIE JOHNSON, G. R. SOUTHARD, MILES S. LEE, PAUL FRIEDMAN, WILLIAM LINDSAY WILLIAMS, WILLIAM P. SHAW, JR., PRENTICE W. THOMAS, RICHARD D. TANNEHILL, PAUL M. BYRNE, DAVID R. BAKER, CHARLES MORGAN, JR., and GEORGE PEACH TAYLOR, for themselves jointly and severally, and for all others similarly situated,

Plaintiffs,

R. E. FARR, MARSHALL MEADOWS, JACK HOPPING, JACK RYAN, MAX W. MORGAN, DAVID J. VANN, ROBERT S. VANCE, RICHARD P. HUMPHREY, JR., JOHN W. McCONNELL, JR., JOSEPH N. LANGAN, WILLIAM M. WILLIAMS, JR., and GARET VAN ANTWERP,

Intervening Plaintiffs,

versus

BETTYE FRINK, Secretary of State of the State of Alabama; HARRELL HAMMONDS, Judge of Probate of Lowndes County, Alabama; JOHN A. SANKEY, Judge of Probate of Montgomery County, Alabama; J. PAUL MEEKS, Judge of Probate of Jefferson County, Alabama; JOHN GRENIER, Chairman of the Alabama State Republican Executive Committee; PERRY O. HOOPER, Secretary of the Alabama State Republican Executive Committee; ROY MAYHALL, Chairman of the Alabama State Democratic Executive Committee; H. G. RAINS, Secretary of the Alabama State Democratic Executive Committee; MacDONALD GALLION, Attorney General of the State of Alabama,

Defendants.

Rives, Circuit Judge, and Thomas
and Johnson, District Judges.

Plaintiffs and the plaintiff-intervenors, as citizens of the United States and of the State of Alabama, and as taxpayers and duly qualified and registered voters in said State and in the Counties of Jefferson and Mobile, jointly and severally bring this action in their own behalf and in behalf of all other voters in the State of Alabama who are similarly situated. The defendant Bettye Frink is sued in her capacity as Secretary of State for the State of Alabama and as a State constitutional official, who is charged with certain duties and responsibilities concerning the election of members of the Alabama Legislature. The defendants Hammonds, Sankey and Meeks are the duly elected, qualified and acting probate judges of Lowndes, Montgomery and Jefferson Counties, respectively. They are sued in their official capacity as constitutional officers for the State of Alabama and as representatives of all the probate judges of Alabama, who are charged by law with performing and exercising certain duties and powers in connection with the nomination and election of members of the Alabama Legislature. The defendants Grenier and Mayhall are the duly elected, qualified and acting Chairmen of the Alabama State Republican Executive Committee and of the Alabama State Democratic Executive Committee, respectively. They are made defendants in their official capacity as Chairmen of the Executive Committees of said political parties, who are charged by law in the State of Alabama with performing certain

duties and functions in connection with the selection, nomination and election of members of the Alabama Legislature. The defendants Hooper and Rains are the duly elected, qualified and acting Secretaries of the Alabama State Republican Executive Committee and the Alabama State Democratic Executive Committee, respectively. Each is sued in his official capacity as an officer of the political party as indicated and is charged by the law of Alabama with performing certain functions and duties in connection with the selection, nomination and election of the Alabama legislators. The defendant MacDonald Gallion is the duly elected, qualified and acting Attorney General of the State of Alabama, who is charged by the law of the State of Alabama with performing certain duties and functions in connection with the nomination and election of members of the Alabama Legislature.

The plaintiffs[1] bring this action in their own behalf and in behalf of all registered and qualified voters similarly situated, for a declaration of their rights concerning the apportionment of representatives and senators among the counties of the State of Alabama and for such relief as may be proper to assure them, and all other voters of the State of Alabama that are similarly situated, free and equal suffrage and equal protection of the laws which plaintiffs claim have been for many years denied them by the defendants and their predecessors in office. The plaintiffs say that this Court has jurisdiction of this cause and that

[1] The term "plaintiffs" will be used throughout this opinion to include the original plaintiffs and all intervening plaintiffs.

they have a right to institute this cause under 17 Stat. at Large 13 and 16 Stat. at Large 144; 42 U. S. C. §§ 1983 and 1988, as follows:

> "§ *1983. Civil action for deprivation of rights.* Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."
>
> * * *
>
> "§ *1988. Proceedings in vindication of civil rights.* The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, ..."

The plaintiffs, as citizens of the United States and of the State of Alabama, base their claim that they are denied the equal protection of the law accorded them by the Fourteenth Amendment to the Constitution of the United States by virtue of the debasement of their votes, since the Legislature of the State of Alabama has failed and continues to fail to reapportion itself since 1900. Plaintiffs say that the failure of the Alabama Legislature to reapportion itself vio-

lates §§ 198, 199 and 200 of the Alabama Constitution of 1901.[2]

In our order of March 30, 1962, setting for hearing the application for interlocutory injunction we indicated our tentative but unanimous opinion that no injunction was required prior to the primary elections, then set for May, 1962, in order for citizens of the State represented by the plaintiffs in this case to be accorded any constitutional rights asserted in time for the exercise of such rights at the general election in November, 1962. In that order we expressed the further view that there was time for the Legislature of Alabama to comply with its duty prescribed by the Constitution of 1901 of the State of Alabama, and that no action on the part of this Court which was not absolutely essential for the protection of any constitutional rights asserted in the complaint should be taken before the Legislature of Alabama had had a further reasonable but prompt opportunity to comply with its duty. The application for interlocutory injunction was assigned for hearing for April 14, 1962.

On that date we reiterated the same views in continuing the application for interlocutory injunction and resetting it for hearing on July 16, 1962. In that order, for the guidance of counsel and for such aid as we might be, we made certain additional remarks to which we now adhere, as follows:

> "We remain of the same opinion that was expressed in the order setting the application for

[2] See Appendix "A."

hearing, viz: until the Legislature has had a further reasonable but prompt opportunity to comply with its duty under Sections 199 and 200 of the Constitution of Alabama, this Court should take no action not absolutely essential for the protection of the constitutional rights asserted in the complaint; and no ruling before the primary elections of May 1962 appears essential.

"The application for interlocutory injunction pertains to the conduct of both the primary elections of May 1962 and the general election of November 1962. That application is therefore continued and re-set for hearing at 10 o'clock a. m. on Monday, July 16, 1962. The hearing cannot be set for a much later date because, if this Court is to act effectively, some action must be taken in ample time before the general election of November 1962.

"For the guidance of counsel and for such aid as we may be in solving the troublesome but important subject of this litigation, we make the following additional remarks:

"(1) Under the opinion of the Supreme Court of the United States in *Baker v. Carr*, No. 6, October Term, 1961, decided March 26, 1962, it seems clear to us that: (a) this Court has jurisdiction of the present action; (b) the complaint as amended states a justiciable cause of action; (c) the plaintiffs have standing to challenge the Alabama apportionment statutes.

"(2) We have no disposition to discourage the introduction of evidence by any party, and in the ordinary case our opinion as to whether the plaintiffs will be entitled to appropriate relief should

await the introduction of evidence. However, we take judicial notice of the same facts which are well known to the Justices of the Supreme Court of Alabama and to the people of this State, as expressed on two different occasions in opinions of the Justices.

"'We judicially know that the population of the various counties of this state has changed during the years which have intervened since the Constitution of 1901 was adopted, so that the representation as provided in §§ 1 and 2 of Title 32, Code 1940, cannot be said to be on a population basis.'

"Opinion of the Justices of the Supreme Court of Alabama, No. 117, August 14, 1950, 47 So. 2d 714, 717.

"'We know, and the people of this State know, that our Constitution says that it *shall* be the duty of the legislature to reapportion the legislature according to population after each decennial census and that this constitutional mandate of the Constitution of 1901 has never been complied with.'

"Opinion of the Justices of the Supreme Court of Alabama, No. 143, July 11, 1955, 81 So. 2d 881, 887.

"(3) The controlling constitutional formula which runs throughout the Constitution of Alabama is thus expressed in the last sentence of Section 284 of said Constitution: 'Representation in the legislature shall be based upon population, and such basis of representation shall not be changed by constitutional amendments.' See also

Sections 198 to 201, inclusive. If that formula is met, then there can be no valid objection under the equal protection clause or any other part of the Constitution of the United States, which is, of course, the supreme law of the Land, binding alike on this Court and on the Legislature of Alabama (Article VI, Clauses 2 and 3 of the Constitution of the United States). It is necessary that any action taken by the Legislature comply with constitutional standards, and it is important that such standards be met not halfheartedly but fully, because once there has been a legislative reapportionment, unless it so completely fails to meet constitutional standards that it must be set aside by court order, it will not be subject to alteration until the next session of the Legislature after the decennial census in 1970 (Constitution of Alabama, Section 198).

"(4) In the event that the Legislature of Alabama complies with its duty before the next hearing, and this Court can so find, then no further action will be needed in this case and the case can be dismissed. If the Legislature does not act, or if its action does not meet constitutional standards, then we will be under a clear duty to take some action in time to take effect before the general election of November 1962. Such action, however, should be held to the minimum that is necessary for the citizens of Alabama to be accorded their constitutional rights.

"(5) To that end, it is fair to advise the parties of our present thinking that we would then follow the plan suggested in the concurring opinion of Mr. Justice Clark in *Baker v. Carr, supra:*

"'One plan might be to start with the existing assembly districts, consolidate some of them, and award the seats thus released to those counties suffering the most egregious discrimination. Other possibilities are present and might be more effective. But the plan here suggested would at least release the strangle hold now on the Assembly and permit it to redistrict itself.'

"(6) While retaining jurisdiction, we could then defer further decision or action to afford the newly elected Legislature full opportunity to heed the constitutional mandate to reapportion. When that has been done the duty resting on us will be at an end and the case can be dismissed."

On July 12, 1962, an Extraordinary Session of the Legislature of Alabama passed a proposed constitutional amendment, commonly referred to as the "67-Senator Amendment,"[3] this proposed constitutional amendment being subject to the ratification of the voters of the State of Alabama in an election to be held in November, 1962. On the same date, the Governor of the State of Alabama signed into law the "Crawford-Webb Bill,"[4] as passed by the Alabama Legislature, which has been referred to as a "stand-by" legislative act to take effect in the event the voters of the State of Alabama refuse to ratify the proposed "67-Senator Amendment," or this Court refuses to accept said "67-Senator Amendment" as ef-

[3] Officially known as Senate Bill 29 and attached hereto as Appendix "B."

[4] Officially known as House Bill 59 and attached hereto as Appendix "C."

fective action that complies with federal constitutional requirements as laid down in *Baker v. Carr*, 369 U. S. 186. The final submission on the motion for interlocutory injunction was on July 16, 1962. This submission was upon the pleadings—a part of which were verified, the affidavits and exhibits thereto, the oral testimony and certain exhibits thereto, and the briefs and arguments of the parties.

It has been generally conceded throughout this litigation by all the parties that the present apportionment of both Houses of the Legislature of the State of Alabama constitutes "invidious discrimination" in violation of the Equal Protection Clause of the Fourteenth Amendment. The invidiousness of the situation is demonstrated by Appendix "D" to this opinion, this appendix listing each of the 67 counties in the State of Alabama, the population of each county in 1901 when the Legislature was last reapportioned, the present population of each county, and the representatives authorized from each county to the Alabama House of Representatives; and by Appendix "E" listing the 35 senatorial districts, the population of each district in 1900 and the population of each district in 1960—each senatorial district in Alabama being authorized one representative to the Senate.

Upon this submission, it becomes our duty: (1) to determine whether those Acts comply with constitutional standards and (2) in the event we are forced, however reluctantly, to find that they do not comply with the guaranty of the equal protection of the laws,

then to decide what remedies are available to and should be utilized by this Court.

In proceeding to the performance of that duty we would make a few preliminary comments. It is not our function or desire to criticize the present or preceding legislatures for any failure to heed the clear mandate both of the Constitution of the United States and of the Constitution of Alabama. Nor would we criticize the Alabama courts for refusing to afford relief prior to *Scholle v. Hare*, 1962, 369 U. S. 429 (see *Waid v. Pool*, 225 Ala. 441, 51 So. 2d 869), or even since that decision (see *Ex parte Rice*, ... Ala. ....., May, 1962). However, in the light of the constitutional principles announced in *Baker v. Carr, supra*, such failures on the parts of the legislative and judicial departments of the State have left the plaintiffs no alternative but to ask the federal courts to protect the constitutional rights of the citizens of Alabama.

Each of the cases which has arisen since *Baker v. Carr, supra*, has agreed that the test of compliance with the guaranty of the equal protection of the laws is whether the inequality in voting power is a result of "invidious discrimination." *Sanders v. Gray*, 203 F. Supp. 158 (April, 1962); *Toombs v. Fortson*, C. A. No. 7883, N. D. Ga., May 25, 1962; *Moss v. Burkart*, No. 9180, W. D. Okla., April 30, 1962 and June 19, 1962. In *Sanders v. Gray, supra*, Judge Bell considered the test rather fully, and arrived at the conclusion that the Supreme Court has now adopted the test urged by Mr. Justice Douglas in his dissenting opinion in *South*

v. Peters, 1950, 339 U. S. 276, 281, that there shall be no inequality in voting power by reason of invidious discrimination.[5]

Judge Bell continued to formulate a test for invidiousness on a consideration of all relevant factors such as rationality or irrationality of state policy, whether or not the system is arbitrary, whether or not the system has a historical basis in our political institutions—federal or state, the presence or absence of political remedy, and the delicate relationship between the federal and state governments under the Constitution.

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[5] In the course of that opinion the Justice had commented that, "The creation by law of favored groups of citizens and the grant to them of preferred political rights is the worst of all discriminations under a democratic system of government." 339 U. S. at 279. In like vein, Professor James E. Larson of the Bureau of Public Administration of the University of Alabama begins his recent work on "Reapportionment and the Courts" with such statements as:

"Any citizen, if asked, would in all probability admit to a sense of outrage at the suggestion that his vote be counted for less in the election of legislative representatives than the vote of any other citizen. The principle that a vote cast be counted of equal value to any other is so fundamental to our understanding of democracy as to pass unchallenged. Yet, in practice, the system of legislative representation in one American state after another shows a tenacious disregard for this rudimentary requirement of political equality."

and

"In a democracy, any action or condition which affects the right to vote is an important matter. It is puzzling, therefore, that unequal representation in the state legislature is not a subject to grip the interest and stir the emotions of the public. Aggrieved citizens no longer rise in force to march on state capitals with the complaint that lack of adequate representation is a cause of sufferings which are 'tedious and beyond the patience of a Job to endure.' Drift of taxing power to Washington, apathy, sophistication, and some cynicism about state government have made such displays out of place and in bad taste. Yet state legislatures today stand as a monumental denial of the principles to which we are committed."

This Court has reached the conclusion that neither the "67-Senator Amendment," nor the "Crawford-Webb Act" meets the necessary constitutional requirements. We find that each of the legislative acts, when considered as a whole, is so obviously discriminatory, arbitrary and irrational that it becomes unnecessary to pursue a detailed development of each of the relevant factors of the test.

While it is true that this Court is not here primarily concerned with the constitutionality of any of the proposed action of the Legislature as measured by Alabama constitutional standards and requirements, this Court is here concerned with whether or not the Alabama Legislature, in taking the action defendants now propose to this Court as "effective legislation," has complied with the constitutional standards required by the Constitution of the United States. In addition, this Court recognizes that there are State constitutional standards to be applied and failure to apply those State constitutional standards by this Court, after it has already taken jurisdiction in this case, will amount to a failure to recognize the principles laid down by the Supreme Court of the United States in *Louisville & Nashville Railroad Co. v. Garrett*, 231 U. S. 298 and followed in *Wofford Oil Co. v. Smith*, 263 F. 396.

The pertinent portion of § 284 of the Constitution of Alabama is as follows:

> ". . . Representation in the legislature shall be based upon population, and such basis of repre-

sentation shall not be changed by constitutional amendments."

This provision in § 284 has never been considered by the courts of the State of Alabama in an adversary proceeding. This Court is informed that during the interval provided by this Court in its order of April 14, 1962, the Legislature refused to inquire of the Supreme Court of the State of Alabama whether this provision in the Constitution of the State of Alabama could be changed by constitutional amendment as the "67-Senator Amendment" proposes. This section of the Constitution of the State of Alabama has been treated, however, by several Justices of the Supreme Court of Alabama in nonadversary proceedings as follows:

(1) *In re Opinion of Justices,* No. 116, 47 So. 2d 713 (1950), where three of the present members of the Alabama Supreme Court, plus one member now deceased,[6] stated:

> "The official proceedings of the Constitutional Convention of 1901 (see Vol. 3, Official Proceedings, Constitutional Convention of 1901, pages 3906-3924) clearly disclose the purpose of the convention to withhold from the legislature the authority to propose amendments to the organic law which would effectively *change the basis of representation in the legislature.* Unquestionably, the above quoted provision of section 284, supra, withholds from the legislature the power and authority to initiate amendments to the Constitu-

[6] Justices Brown, Livingston, Lawson and Simpson.

tion which would have the effect of changing the basis of representation in the legislature to other than a population basis."

(2) *Opinion of the Justices*, No. 148, 81 So. 2d 881, (1955), where four of the Alabama Supreme Court Justices, only two of whom are now on the Court,[7] stated:

> "Surely it is self evident that with the ultimate sovereignty residing in the people, they can legally and lawfully remove any provision from the Constitution which they previously put in or ratified, even to the extent of amending or repealing one of the sections comprising our Declaration of Rights, even though it is provided that they 'shall forever remain inviolate.'"

In the same opinion three of the Alabama Supreme Court Justices, all of whom are presently members of that Court,[8] stated:

> "The only way that the people can amend or change the last sentence of Section 284, supra, is through a constitutional convention. It cannot be done by constitutional amendment."

The manifest uncertainty of the legality of the proposed constitutional amendment, as measured by State standards and as demonstrated by the above-quoted opinions of the Justices of the Supreme Court of Alabama, forces this Court to the conclusion that the

[7] Justices Simpson, Stakely, Merrill and Mayfield.
[8] Justices Livingston, Lawson and Goodwyn.

Legislature may not have complied with the State Constitution in the passage of such an Act.

That portion of the proposed constitutional amendment providing a senator for each of the 67 counties of the State if approved by the voters would serve to make the discrimination in the Senate even more invidious than at present. Under the proposed amendment, senators elected by 20% of the State population could effectively block any proposed legislation, and senators elected by 14% of the population could prevent the submission of any future proposal to amend the Constitution of the State of Alabama. The present control of the Senate by members representing 25.1% of the people of Alabama would be reduced to control by members representing 19.4% of the people of the State. The 34 smallest counties, whose total population is less than that of Jefferson County, would have a majority of the total membership of the Senate. The only conceivable rationalization of this provision is that it is based on political units of the State and is analogous to the requirement of the Constitution of the United States that the Senate "shall be composed of two Senators from each State." Article I, Section 3, Clause 1, superseded by Amendment 17. The analogy cannot survive the most superficial examination into the history of the requirement of the Federal Constitution and the diametrically opposing history of the requirement of the Alabama Constitution that representation shall be based on population. Nor can it survive a comparison of the different political natures of states and counties. It has been

held repeatedly in Alabama that a county derives its power from the State; that a county is but a governmental agency, possessing no power and subject to no duty not originating from the law by which it is created and in which its functions are defined. The Alabama courts have said that a county is nothing more than an involuntary political or civil division of the State, created by statute to aid in the administration of government; that whatever power the county possesses, or whatever duty it is required to perform, originates solely in the statutes creating it, or in the statutes declaring its power and duty. *Askew v. Hale County*, 54 Ala. 639; *State v. Butler*, 225 Ala. 191, 142 So. 531; *Tuscaloosa County v. Alabama Great Southern R. R. Co.*, 227 Ala. 428, 150 So. 328; *Montgomery v. State*, 228 Ala. 296, 153 So. 394; *Moore v. Walker County*, 236 Ala. 688, 185 So. 175.

In a previous order we indicated our view that the controlling or dominant provision of the Alabama Constitution on the subject of representation in the Legislature was the last sentence of § 284 heretofore quoted. To some extent that thought is emphasized separately as to the House by §§ 198 and 199 and as to the Senate by § 200, but at the same time diluted by other and somewhat conflicting requirements. As to the House, it is provided that each county shall be entitled to one representative and that the total shall be not more than 105 plus the number of new counties subsequently created, so that the total membership of the House is now 106, of which 67 are distributed one to each of the 67 counties, leaving only 39 to be apportioned

among the several counties according to the number of inhabitants in each. As to the Senate, it is provided by § 197 that, "The whole number of senators shall be not less than one-fourth or more than one-third of the whole number of representatives." At present the number of senators is the maximum, 35. Section 200 provides for "as many senatorial districts as there are senators, which districts shall be as nearly equal to each other in the number of inhabitants as may be, and each shall be entitled to one senator, and no more." It further provides that, "No county shall be divided between two districts, and no district shall be made up of two or more counties not contiguous to each other."

If what we have called the controlling or dominant provision that representation shall be based upon population should be met completely in both Houses, then, without doubt, the State would accord to every person the equal protection of the laws in compliance with the Fourteenth Amendment. It is difficult to determine how far that overriding requirement of the Federal Constitution can be met and also comply with each of the more detailed requirements of the Alabama Constitution. Certainly an earnest effort must be made to meet all such requirements, and it is only in the event that proves impossible, that the Supremacy Clause of the Federal Constitution would cause any irreconcilable and conflicting requirement of the State Constitution to give way. Such a result must appear necessary beyond a reasonable doubt before any of the requirements of the State Constitution can be ignored. The result is that we must approach

the task of finding a remedy for the existing invidious discrimination within the framework of each of the detailed requirements of the Alabama Constitution.

Those requirements make it obvious that in *neither* the House nor the Senate can representation be based strictly and entirely upon population. There must be differences in the values of votes from the several counties in each House of the Legislature. In *Toombs v. Fortson, supra,* that court concluded that it must apply the "invidious discrimination" test "in determining whether the plaintiffs' rights under the equal protection clause have been violated by a system of legislative representation in either or both of the chambers of the State Legislature in such manner or to such a degree as to constitute invidious discrimination as to them."

In that case the court further stated that ". . . we do not find any authoritative decision by the Supreme Court that causes us to require that in order to give the plaintiff his constitutional rights the state legislature must be constituted of two Houses, both of which are elected according to population.". It conceded, however, that there was some basis for that argument in the light of *Scholle v. Hare, supra,* especially when consideration is given to Mr. Justice Douglas's dissenting opinion in *MacDougall v. Green,* 335 U. S. 281, at pages 287, 289. See also *The Maryland Committee for Fair Representation, et al. v. Tawes, Governor,* No. 13920 Equity, from the Circuit Court for Anne Arundel County, Md., filed June 28, 1962. In the present case that doubtful question is further complicated by the detailed requirements of the

Alabama Constitution which, as has been said, make it impossible for the representation in *either* House to be based strictly and entirely upon population. The result may well be that representation according to population *to some extent* must be required in *both* Houses if invidious discrimination in the legislative systems as a whole is to be avoided. Indeed, as has also been observed, it is the policy and theme of the Alabama Constitution to require representation according to population in both Houses as nearly as may be, while still complying with more detailed provisions. So long as only extremely partial representation according to population can be achieved in the House, we do not believe that the principle of representation according to population can be completely abandoned in the Senate, as would be done under the "67-Senator Amendment." The provision that the Senate shall consist of a senator from each of the 67 counties, in our opinion, in the light of the other provisions of the Alabama Constitution governing representation in the Legislature, would result in invidious discrimination and a denial of the equal protection of the laws. Compare *Brewer v. Gray*, Fla. 1956, 86 So. 2d 799. These reasons are in addition to those heretofore given in this opinion.

The proposed reapportionment of the Senate in the "Crawford-Webb Act" is a step in the right direction, but an extremely short step. It does correct a few of the most glaring discriminations by eliminating such single county senatorial districts as Lowndes with a population of 15,417, Wilcox with a population of 18,739, Barbour with a population of 24,700, and Marengo with a

population of 27,098, and puts those small counties into multiple county districts. It makes Etowah, with a population of 96,980, into a single county district. The Act embodies some other improvements on the present system of representation in the Senate. On the other hand, this piece of legislation keeps the control of the Alabama Senate in 27.6% of the people of the State of Alabama. This represents an improvement of only 2.6% over the present control of 25.1%. The vote of a citizen of the Bibb and Perry senatorial districts would be worth twenty times that of a citizen in the Jefferson senatorial district. The vote of a citizen in the 6 smallest senatorial districts would be worth fifteen or more times that of a citizen in the Jefferson senatorial district. In 22 districts, a citizen would have eight or more times as much representation as a citizen residing in the Jefferson district. Other isolated variations are: Lauderdale (population 61,622) is given one-half a senator by being placed with Limestone (population 36,513), making a district of over 98,000 people. This is opposed to Pickens (population 21,882) and Lamar (population 14,271), having one-half a senator each, with a total population of 36,153. To aggravate this, Colbert (population 46,506), Franklin (population 21,988) and Marion (population 21,837), having a total population of over 90,000, are given one-third a senator, while Henry (population 15,286), Hale (population 19,537), Bibb (population 14,357), Perry (population 17,358), Bullock (population 13,462), Lowndes (population 15,417), Marengo (population 27,098) and Sumter (population 20,041), all in the Black Belt area, are each placed in two-county senatorial districts and thereby given one-half a senator. An analysis of the "Crawford-Webb Act"

as it proposes to reapportion the Alabama Senate is attached hereto as Appendix "F." In summary as to the Senate, at best the "Crawford-Webb Act" represents a slight improvement over the present system of representation.

The "Crawford-Webb Act" as it concerns the Alabama House of Representatives is totally unacceptable. The proposed allocation of seats in the House adopts the Alabama constitutional requirement of one per county, with the remaining 39 seats allocated in a manner showing that no rational reapportionment plan was followed.[9] For instance, each representative from Jefferson County (12 total) and Mobile (6 total) must represent over 52,000 citizens. The Black Belt counties of Bullock, Lowndes, Autauga, Perry, Hale, Greene, Wilcox and Henry, all have representatives speaking for less than 20,000 citizens.

The Legislature itself must have recognized that the provisions of the "Crawford-Webb Act" for representation in the House were not fair or reasonable when it proposed in the "67-Senator Amendment" a reapportionment of the House of Representatives, based upon reason, with a rational regard for known and accepted standards of apportionment. The "67-Senator Amendment" proposes to apportion the seats in the House of Representatives according to the "Equal Proportions Method." (See footnote 9, *supra*.) It is an endeavor to equalize the

[9] See "A Survey of Methods of Reapportionment in Congress," by Edward V. Huntington, Department of Mathematics, Harvard University, Senate Document No. 304, 76th Congress, Third Session.

representation between counties in the House of Representatives of a fixed size by reducing as much as possible the percentage difference between the representation of each county. This Court accepts and adopts as a part of its order that portion of the proposed "67-Senator Amendment" that relates to the reapportionment of the Alabama House of Representatives. This action will increase the representation of 6 counties as follows: Jefferson from 7 to 17; Mobile from 3 to 8; Calhoun from 2 to 3; Etowah from 2 to 3; Madison from 2 to 3; and Tuscaloosa from 2 to 3. It will decrease the representation of 19 counties as follows: Dallas from 3 to 2; the following each from 2 to 1: Jackson, Chambers, Tallapoosa, Hale, Perry, Sumter, Marengo, Wilcox, Lowndes, Elmore, Butler, Pike, Lee, Russell, Barbour, Henry, Clarke and Bullock. It will result in apportioning the House seats (106) as follows: Jefferson—17 (population 634,864); Mobile—8 (population 314,301); Montgomery—4 (population 169,210); Calhoun—3 (population 95,878); Etowah—3 (population 96,980); Madison—3 (population 117,348); Tuscaloosa—3 (population 109,047); Dallas, Lauderdale, Morgan, Talladega and Walker—2 each; the remaining counties—1 each.

As a permanent piece of legislation the "Crawford-Webb Act" would remain in effect not subject to alteration until the next decennial federal census. See §§ 198 and 200 of the Constitution of Alabama of 1901. The Attorney General of Alabama so argues in his brief, as follows: ". . . if the constitutional amendment is defeated, the statutory bill, if constitutionally sound, will be effective and cannot be changed before the next Federal

Census." Because any legislative reapportionment is not subject to change over such a long period, we called attention in our order of April 14, 1962 to the importance of constitutional standards being met "not halfheartedly but fully." As a piece of permanent legislation the provisions of the "Crawford-Webb Act" both as to the Senate and as to the House are totally unacceptable.

Those provisions are unacceptable for the further reason that the effective date of the Act is postponed until the general election to be held in November 1966, so as to await the approval or disapproval by the voters of the "67-Senator Amendment." Such postponement was unnecessary because, as we have already held, the portion of that proposed amendment providing a senator for each of the 67 counties, if approved by the voters, would itself be unconstitutional. No good reason is shown, therefore, why the plaintiffs and others like situated should be thus postponed in the exercise of their rights to the equal protection of the laws, nor why this Court should not now take some steps which may enable the Legislature elected in November 1962 to provide for a fair and proper reapportionment.

The changes resulting from the present order of this Court, unlike those which would result from a permanent Act of the Legislature, will be subject to change by the newly elected Legislature. As indicated in our order of April 14, such changes should be held to the minimum necessary to release the strangle hold on the Legislature and permit it to reapportion itself.

The duty to reapportion rests on the Legislature. This Court acts in the matter reluctantly because of the long-continued default and total inability of the Legislature to reapportion itself. Even under such circumstances, we think that a federal court, in the light of its delicate relationship with a state legislature, should, so far as is possible, accept such parts of the Acts of the Legislature as have any merit in framing the order of the Court. For the purpose of the order of the Court to release the strangle hold on the Legislature and permit it to reapportion itself, such parts of the Acts of the Legislature need not meet the standard of constitutionality required of a permanent Act of reapportionment.

We have no hesitancy in accepting as a part of this Court's order the provisions of the proposed "67-Senator Amendment" relating to the House of Representatives. The real difficulty comes as to the Senate. The proposed reapportionment of the Senate in the "Crawford-Webb Act," unacceptable as a piece of permanent legislation, may not even break the strangle hold. The only alternatives, however, which have been suggested or which appear to be subject to approval by the application of mathematical or judicial as distinguished from political standards, would result in very drastic reapportionment, and would probably place 9 counties having over half the population of the State in control of the Senate. Several senators would have to be allotted to Jefferson County and more than one to Mobile County and to Montgomery County. If the provisions of the State Constitution do not permit a single county to be divided into more than one senatorial district, such restriction

would have to be held in conflict with the overriding requirement of equal protection of the laws provided by the Federal Constitution. We are not yet convinced of such conflict beyond a reasonable doubt. Despite our doubts as to their sufficiency, we therefore accept, in framing our order, that part of the "Crawford-Webb Act" providing for the reapportionment of the Senate.

It is this Court's intention that the changes relating to the House of Representatives provided in the proposed "67-Senator Amendment" and those relating to the Senate provided in the "Crawford-Webb Act" should go into effect at the general election to be held in the State in November 1962, and with the Legislature as provisionally reapportioned by this Court taking office immediately after said election. It is this Court's further intention to retain jurisdiction of this case and defer any hearing on plaintiffs' motion for a final injunction until the Legislature, as provisionally reapportioned by this order, has an opportunity to provide for a true reapportionment of both Houses of the Alabama Legislature. The Court hopes that the moderate steps taken by this order may be enough to break the strangle hold. They certainly will not suffice as any permanent reapportionment. If they should prove insufficient to break the strangle hold, the Court remains under the solemn duty to relieve the plaintiffs and other citizens like situated from further denial of the equal protection of the laws. That much must be accomplished before there can be a final disposition of this case.

In order to effectuate this opinion the Court will issue an appropriate order.

Done this the 21st day of July, 1962.

(S.) RICHARD T. RIVES,
United States Circuit Judge,

(S.) DANIEL H. THOMAS,
United States District Judge,

(S.) FRANK M. JOHNSON, JR.,
United States District Judge.

APPENDIX "A".

"Sec. 198. The house of representatives shall consist of not more than one hundred and five members, unless new counties shall be created, in which event each new county shall be entitled to one representative. The members of the house of representatives shall be apportioned by the legislature among the several counties of the state, according to the number of inhabitants in them, respectively, as ascertained by the decennial census of the United States, which apportionment, when made, shall not be subject to alteration until the next session of the legislature after the next decennial census of the United States shall have been taken."

* * *

"Sec. 199. It shall be the duty of the legislature at its first session after the taking of the decennial census of the United States in the year nineteen

hundred and ten, and after each subsequent decennial census, to fix by law the number of representatives and apportion them among the several counties of the state, according to the number of inhabitants in them, respectively; provided, that each county shall be entitled to at least one representative."

* * *

"Sec. 200. It shall be the duty of the legislature at its first session after taking of the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the number of senators, and to divide the state into as many senatorial districts as there are senators, which districts shall be as nearly equal to each other in the number of inhabitants as may be, and each shall be entitled to one senator, and no more; and such districts, when formed, shall not be changed until the next apportioning session of the legislature, after the next decennial census of the United States shall have been taken; provided, that counties created after the next preceding apportioning session of the legislature may be attached to senatorial districts. No county shall be divided between two districts, and no district shall be made up of two or more counties not contiguous to each other."

APPENDIX "B".

S. 20.

By Mr. Gaither

Enrolled; An Act, Proposing an amendment to the Constitution of Alabama relating to legislative apportionment. BE IT ENACTED BY THE LEGISLATURE OF ALABAMA: *Section 1.* The following amendment to the Constitution of Alabama 1901 is proposed and shall become valid as a part thereof when approved and proclaimed as prescribed by law: *Proposed Amendment 1.* The legislature of Alabama shall consist of a senator for each county and 106 members of the house of representatives, to be apportioned among the several counties as herein prescribed; provided, that in addition to the above number of representatives each new county hereafter created shall be entitled to at least one representative. 2. At the general election in 1966, and every four years thereafter, a senator shall be elected by the qualified electors of each county in the state. 3. At the general election in 1966, and every four years thereafter, until the house of representatives is reapportioned as herein provided, the qualified electors of each county in the state shall elect such number of representatives as may be apportioned to the county as follows: The county of Jefferson shall have and elect seventeen representatives; the county of Mobile shall have and elect eight representatives; the county of Montgomery shall have and elect four representatives; the counties of Calhoun, Etowah, Madison and Tuscaloosa shall each have and elect three representatives; the counties of Dallas, Lauderdale, Morgan, Talladega and Walker

shall each have and elect two representatives; and the remaining counties of the state shall each have and elect one representative. 4. On the first day, or within one week thereafter, of the regular session of the legislature in 1971, and every fifth regular session thereafter, the clerk of the house of representatives shall transmit to the secretary of state a statement showing the whole number of persons in each county under the most recent decennial census of the United States, and the number of representatives to which each county will be entitled under an apportionment of the then existing number of representatives by the method known as the method of equal proportions, no county to receive less than one representative. 5. In Section 284 of this Constitution as amended, strike out the last sentence thereof and insert the following sentence: Representation in the house of representatives of the legislature shall be based upon population. 6. Article IX (sections 197-203) of this Constitution is hereby expressly repealed. *Section 2.* An election upon the proposed amendment is ordered to be held on the date of the general election next succeeding the final adjournment of the current session of the Legislature. The election shall be held in accordance with the provisions of Sections 284 and 285 of the Constitution of Alabama, as amended, and Chapter 1, Article 18, Title 17 of the Code of Alabama 1940. *Section 3.* Notice of the election and of the proposed amendment shall be given by proclamation of the Governor, which proclamation shall be published once a week for four successive weeks next preceding the day appointed for the election in a newspaper in each county of the State. In every county in which no newspaper is published, a copy of the

notice shall be posted at each courthouse and post office.

(S.) ALBERT BOUTWELL,
President and Presiding Officer of the Senate.

No. 93, Received Jul. 13, 1962, Time: 2:20 P.M. Secretary of State.

(S.) VIRGIS M. ASHWORTH,
Speaker of the House of Representatives.

2-29-MS

Senate 6-20-62

I hereby certify that the within Act originated in and passed the Senate, as amended.

Senate 7-12-62

I hereby certify that the within Act originated in and passed the Senate, as amended by Conference Committee Report.

J. E. SPEIGHT,
Secretary.

House of Representatives Passed 7-10-62, as amended. Passed 7-12-62, as amended by Conference Committee Report.

By: Mr. Gaither.

APPENDIX "C".

Bevill, Shumate, Gilchrist,
Hanby, Oden

H. 59.

Enrolled, An Act, To fix the number of senators and representatives in the legislature, divide the state into senatorial districts, and apportion the senators and representatives among the several districts and counties.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. The senate of the legislature shall be composed of 35 senators representing 35 senatorial districts, each district to elect one senator and no more.

Section 2. The state is hereby divided into 35 senatorial districts as follows:

First, the counties of Lauderdale and Limestone; second, the counties of Lawrence and Morgan; third, the counties of Cullman and Winston; fourth, the county of Madison; fifth, the counties of Jackson and Marshall; sixth, the county of Etowah; seventh, the county of Calhoun; eighth, the county of Talladega; ninth, the counties of Randolph and Chambers; tenth, the counties of Elmore and Tallapoosa; eleventh, the county of Tuscaloosa; twelfth, the counties of Fayette and Walker; thirteenth, the county of Jefferson; fourteenth, the counties of Pickens and Lamar; fifteenth, the counties of Autauga, Chilton and Shel-

by; sixteenth, the counties of Monroe and Wilcox; seventeenth, the counties of Butler, Covington and Conecuh; eighteenth, the counties of Bibb and Perry; nineteenth, the counties of Clarke, Choctaw and Washington; twentieth, the counties of Marengo and Sumter; twenty-first, the counties of Baldwin and Escambia; twenty-second, the counties of Blount and St. Clair; twenty-third, the counties of Dale and Geneva; twenty-fourth, the counties of Barbour and Pike; twenty-fifth, the counties of Coffee and Crenshaw; twenty-sixth, the counties of Bullock and Macon; twenty-seventh, the counties of Lee and Russell; twenty-eighth, the county of Montgomery; twenty-ninth, the counties of Cherokee and DeKalb; thirtieth, the counties of Dallas and Lowndes; thirty-first, the counties of Colbert, Franklin and Marion; thirty-second, the counties of Greene and Hale; thirty-third, the county of Mobile; thirty-fourth, the counties of Coosa, Clay and Cleburne; thirty-fifth, the counties of Henry and Houston.

In districts consisting of more than one county, the senators shall not be elected for more than one term consecutively from any one county in the district, but shall reside in and be elected alternately and in turn from each of the counties within such district. The first senator to be elected in such districts shall reside in the county having the largest population, except where that county had the last preceding senator. It is provided, however, that any senator in office on the effective date of this enactment shall be eligible to succeed himself as a member of the Senate, any other provision of this paragraph to the contrary notwithstanding.

Section 3. The house of representatives of the legislature shall consist of 106 members distributed

among the several counties of the state as follows:

The county of Jefferson shall have and elect 12, the county of Mobile 6, and the county of Montgomery 4; the counties of Calhoun, Etowah, and Madison and Tuscaloosa 3 each; the counties of Baldwin, Colbert, Cullman, Dallas, Houston, Lauderdale, Lee, Marshall, Morgan, Russell, Talladega and Walker 2 each; and the remaining counties 1 each.

Section 4. This Act shall take effect for the election of senators and representatives at the general election to be held in November 1966, and shall be effective thereafter until the legislature is reapportioned according to law.

Section 5. The provisions of this Act are severable. If any part of this Act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

(S.) VIRGIS M. ASHWORTH,
Speaker of the House of Representatives,

(S.) ALBERT BOUTWELL,
President and Presiding Officer of the Senate.

Approved July 12, 1962. Time: 10:37 A.M.

(S.) JOHN PATTERSON,
Governor.

House of Representatives

July 10, 1962

I hereby certify that the within Act originated in and was passed by the House June 26, 1962 as amended.

OAKLEY MELTON, JR.,
Clerk.

Senate	7/7/62	Amended and Passed
House	7/10/62	Concurred in Senate Amendment

No. 91, Received Jul. 12, 1962, Time: 10:45 A.M., Secretary of State.

APPENDIX "D".

REPRESENTATION BY COUNTIES: (1901-1960)

		1901			1950			1960		
	County	Total Pop.	No. Rep's	Pop. Per Rep.	Total Pop.	No. Rep's	Pop. Per Rep.	Total Pop.	No. Rep's	Pop. Per Rep.
1.	Autauga	17,915	1	17,915	18,186	1	18,186	18,739	1	18,739
2.	Baldwin	13,194	1	13,194	40,997	1	40,997	49,088	1	49,088
3.	Barbour	35,152	2	17,576	28,892	2	14,446	24,700	2	12,350
4.	Bibb	18,498	1	18,498	17,987	1	17,987	14,357	1	14,357
5.	Blount	23,119	1	23,119	28,975	1	28,975	25,449	1	25,449
6.	Bullock	31,944	2	15,972	16,054	2	8,027	13,462	2	6,731
7.	Butler	25,760	2	12,880	29,228	2	14,614	24,560	2	12,280
8.	Calhoun	34,874	2	17,437	79,539	2	39,769	95,878	2	47,939
9.	Chambers	32,554	2	16,277	39,528	2	19,764	37,828	2	18,914
10.	Cherokee	21,096	1	21,096	17,634	1	17,634	16,303	1	16,303
11.	Chilton	16,522	1	16,522	26,922	1	26,922	25,693	1	25,693
12.	Choctaw	18,136	1	18,136	19,152	1	19,152	17,870	1	17,870
13.	Clarke	27,790	2	13,895	26,548	2	13,274	25,738	2	12,869
14.	Clay	17,099	1	17,099	13,929	1	13,929	12,400	1	12,400
15.	Cleburne	13,206	1	13,206	11,904	1	11,904	10,911	1	10,911
16.	Coffee	20,972	1	20,972	30,720	1	30,720	30,583	1	30,583
17.	Colbert	22,341	1	22,341	39,561	1	39,561	46,506	1	46,506
18.	Conecuh	17,514	1	17,514	21,766	1	21,766	17,762	1	17,762
19.	Coosa	16,144	1	16,144	11,766	1	11,766	10,726	1	10,726
20.	Covington	15,346	1	15,346	40,373	1	40,373	35,631	1	35,631
21.	Crenshaw	19,668	1	19,668	18,981	1	18,981	14,909	1	14,909
22.	Cullman	17,849	1	17,849	49,046	1	49,046	45,572	1	45,572
23.	Dale	21,189	1	21,189	20,828	1	20,828	31,066	1	31,066
24.	Dallas	54,657	3	18,219	56,270	3	18,757	56,667	3	18,889
25.	DeKalb	23,558	1	23,558	45,048	1	45,048	41,417	1	41,417
26.	Elmore	26,098	2	13,049	31,649	2	15,824	30,524	2	15,262
27.	Escambia	11,320	1	11,320	31,443	1	31,443	33,511	1	33,511
28.	Etowah	27,360	2	13,680	93,892	2	46,946	96,980	2	48,490
29.	Fayette	14,132	1	14,132	19,388	1	19,388	16,148	1	16,148
30.	Franklin	16,511	1	16,511	25,705	1	25,705	21,988	1	21,988
31.	Geneva	19,096	1	19,096	25,899	1	25,899	22,310	1	22,310
32.	Greene	24,182	1	24,182	16,482	1	16,482	13,600	1	13,600
33.	Hale	31,010	2	15,505	20,832	2	10,416	19,537	2	9,769
34.	Henry	36,146	2	18,073	18,674	2	9,337	15,286	2	7,643
35.	Houston				46,522	1	46,522	50,718	1	50,718
36.	Jackson	30,508	2	15,254	38,988	2	19,494	36,681	2	18,341

APPENDIX "D"—(Continued)

REPRESENTATION BY COUNTIES: (1901-1960)

		1901			1950			1960	
	County	Total Pop.	No. Rep's	Pop. Per Rep.	Total Pop.	No. Rep's	Pop. Per Rep.	Total Pop.	No. Rep's	Pop. Per Rep.
37.	Jefferson	140,420	7	20,060	558,179	7	79,740	634,864	7	90,695
38.	Lamar	16,084	1	16,084	16,441	1	16,441	14,271	1	14,271
39.	Lauderdale	26,548	2	13,274	54,179	2	27,089	61,622	2	30,811
40.	Lawrence	20,124	1	20,124	27,128	1	27,128	24,501	1	24,501
41.	Lee	31,826	2	15,913	45,073	2	22,536	49,754	2	24,877
42.	Limestone	22,387	1	22,387	35,766	1	35,766	36,513	1	36,513
43.	Lowndes	35,650	2	17,825	18,018	2	9,009	15,417	2	7,709
44.	Macon	23,126	1	23,126	30,561	1	30,561	26,717	1	26,717
45.	Madison	43,702	2	21,851	72,903	2	36,451	117,348	2	58,674
46.	Marengo	38,314	2	19,157	29,494	2	14,747	27,098	2	13,549
47.	Marion	14,494	1	14,494	27,264	1	27,264	21,837	1	21,837
48.	Marshall	23,289	1	23,289	45,090	1	45,090	48,018	1	48,018
49.	Mobile	62,739	3	20,913	231,105	3	77,035	314,301	3	104,767
50.	Monroe	23,666	1	23,666	25,732	1	25,732	22,372	1	22,372
51.	Montgomery	72,044	4	18,011	138,965	4	34,741	169,210	4	42,303
52.	Morgan	28,820	2	14,410	52,924	2	26,462	60,454	2	30,227
53.	Perry	31,782	2	15,891	20,439	2	10,219	17,358	2	8,679
54.	Pickens	24,402	1	24,402	24,349	1	24,349	21,882	1	21,882
55.	Pike	29,172	2	14,586	30,608	2	15,304	25,987	2	12,994
56.	Randolph	21,647	1	21,647	22,513	1	22,513	19,477	1	19,477
57.	Russell	27,082	2	13,541	40,364	2	20,182	46,351	2	23,176
58.	Shelby	23,684	1	23,684	30,362	1	30,362	32,132	1	32,132
59.	St. Clair	19,425	1	19,425	26,687	1	26,687	25,388	1	25,388
60.	Sumter	32,710	2	16,355	23,610	2	11,805	20,041	2	10,021
61.	Talladega	35,772	2	17,886	63,639	2	31,819	65,495	2	32,748
62.	Tallapoosa	29,674	2	14,837	35,074	2	17,537	35,007	2	17,504
63.	Tuscaloosa	36,146	2	18,073	94,092	2	47,046	109,047	2	54,524
64.	Walker	25,162	2	12,581	63,769	2	31,884	54,211	2	27,106
65.	Washington	11,134	1	11,134	15,612	1	15,612	15,372	1	15,372
66.	Wilcox	35,630	2	17,815	23,476	2	11,738	18,739	2	9,369
67.	Winston	9,554	1	9,554	18,250	1	18,250	14,858	1	14,858
Largest				24,402			79,740			104,767
Smallest				9,554			8,027			6,731
Difference				14,848			71,713			98,036
State		1,828,697	105	17,416	3,061,743	106	28,884	3,244,386	106	30,607

APPENDIX "E".

SENATORIAL DISTRICTS

(one Senator per district)

District	Total Population			Counties
	1900	1950	1960	
1	48,946	89,945	98,135	Lauderdale and Limestone
2	48,944	88,052	84,955	Lawrence and Morgan
3	50,522	96,271	85,879	Blount, Cullman and Winston
4	43,702	72,903	117,348	Madison
5	53,797	84,078	84,699	Jackson and Marshall
6	52,749	120,579	122,368	Etowah and St. Clair
7	34,874	79,539	95,878	Calhoun
8	35,773	63,639	65,495	Talladega
9	54,201	62,041	57,305	Chambers and Randolph
10	55,774	66,723	65,531	Elmore and Tallapoosa
11	36,147	94,092	109,047	Tuscaloosa
12	55,378	99,598	84,630	Fayette, Lamar and Walker
13	140,420	558,179	634,864	Jefferson
14	57,112	47,959	41,923	Pickens and Sumter
15	57,121	75,470	76,564	Autauga, Chilton and Shelby
16	35,651	18,018	15,417	Lowndes
17	58,621	91,377	77,953	Butler, Conecuh and Covington
18	50,281	38,426	31,715	Bibb and Perry
19	57,060	61,312	59,180	Choctaw, Clarke and Washington
20	38,315	29,494	27,098	Marengo
21	48,180	98,172	104,971	Baldwin, Escambia and Monroe
22	35,631	23,476	18,739	Wilcox
23	40,285	46,727	53,376	Dale and Geneva
24	35,152	28,892	24,700	Barbour
25	69,812	80,309	70,479	Coffee, Crenshaw and Pike
26	55,070	46,615	40,179	Bullock and Macon
27	58,909	85,437	96,105	Lee and Russell
28	72,047	138,965	169,210	Montgomery
29	44,654	62,682	57,720	Cherokee and DeKalb
30	54,657	56,270	56,667	Dallas
31	52,346	92,530	90,331	Colbert, Franklin and Marion
32	55,193	37,314	33,137	Greene and Hale
33	62,740	231,105	314,301	Mobile
34	46,449	37,500		

(one Senator per district)

District	Total Population			Counties
	1900	1950	1960	
1	48,946	89,945	98,135	Lauderdale and Limestone
2	48,944	80,052	84,955	Lawrence and Morgan
3	50,522	96,271	85,879	Blount, Cullman and Winston
4	43,702	72,903	117,348	Madison
5	53,797	84,078	84,699	Jackson and Marshall
6	52,749	120,579	122,368	Etowah and St. Clair
7	34,874	79,539	95,878	Calhoun
8	35,773	63,639	65,495	Talladega
9	54,201	62,041	57,305	Chambers and Randolph
10	55,774	66,723	65,531	Elmore and Tallapoosa
11	36,147	94,092	109,047	Tuscaloosa
12	55,378	99,598	84,630	Fayette, Lamar and Walker
13	140,420	558,179	634,864	Jefferson
14	57,112	47,959	41,923	Pickens and Sumter
15	57,121	75,470	76,564	Autauga, Chilton and Shelby
16	35,651	18,018	15,417	Lowndes
17	58,621	91,377	77,953	Butler, Conecuh and Covington
18	50,281	38,426	31,715	Bibb and Perry
19	57,060	61,312	59,180	Choctaw, Clarke and Washington
20	38,315	29,494	27,098	Marengo
21	48,180	98,172	104,971	Baldwin, Escambia and Monroe
22	35,631	23,476	18,739	Wilcox
23	40,285	46,727	53,376	Dale and Geneva
24	35,152	28,892	24,700	Barbour
25	69,812	80,309	70,479	Coffee, Crenshaw and Pike
26	55,070	46,615	40,179	Bullock and Macon
27	58,909	85,437	96,105	Lee and Russell
28	72,047	138,965	169,210	Montgomery
29	44,654	62,682	57,720	Cherokee and DeKalb
30	54,657	56,270	56,667	Dallas
31	52,346	92,530	90,331	Colbert, Franklin and Marion
32	55,193	37,314	33,137	Greene and Hale
33	62,740	231,105	314,301	Mobile
34	46,449	37,599	34,037	Clay, Cleburne and Coosa
35	36,147[1]	65,196	66,004	Henry and Houston
35	1,828,697[2]	3,061,743	3,266,740[3]	

[1] Houston added to circuit on creation of county out of Dale, Geneva and Henry in 1903.
[2] True senatorial district in 1901—53,248.
[3] True senatorial district in 1961—93,335.

APPENDIX "F".

SENATE DISTRICTS PROVIDED IN "CRAWFORD-WEBB ACT" SHOWING POPULATION VARIATIONS

Districts	Population	Variation[1]
(Under Represented)		
Jefferson	634,864	+ 541,529
Mobile	314,301	+ 220,966
Montgomery	169,210	+ 75,875
Madison	117,348	+ 24,013
Tuscaloosa	109,047	+ 15,712
Lauderdale Limestone	98,135	+ 4,800
Etowah*	96,980	+ 3,645
Lee Russell	96,105	+ 2,770
Calhoun	95,878	+ 2,543
(Over Represented)		
Colbert Franklin Marion	90,331	— 3,004
Lawrence Morgan	84,955	— 8,380
Jackson Marshall	84,699	— 8,636
Baldwin Escambia*	82,599	— 10,736
Butler Conecuh Covington	77,953	— 15,382
Autauga Chilton Shelby	76,564	— 16,771
Lowndes Dallas*	72,084	— 21,251
Fayette Walker*	70,359	— 22,976
Henry Houston	66,004	— 27,331
Tallapoosa Elmore	65,531	— 27,804
Talladega	65,495	— 27,840
Cullman Winston*	60,430	— 32,498
Choctaw Clarke Washington	59,180	— 34,155
Cherokee DeKalb	57,720	— 35,615
Chambers Randolph	57,305	— 36,030
Dale Geneva	53,376	— 39,959
St. Clair Blount*	50,837	— 42,496
Barbour Pike*	50,687	— 42,648
Marengo Sumter*	47,139	— 46,196
Coffee Crenshaw*	45,492	— 47,843
Wilcox Monroe*	41,111	— 52,224
Pickens Lamar*	36,153	— 56,182
Bullock Macon	40,179	— 53,156
Clay Cleburne Coosa	34,037	— 59,298
Greene Hale	33,137	— 60,198
Bibb Perry	31,715	— 61,620

[1] Variation from Perfect District of 93,335.
* New districts created by this Act.

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION.

CIVIL ACTION No. 1744-N.

M. O. SIMS, FRED A. BEAM, WYLIE JOHNSON, G. R. SOUTHARD, MILES S. LEE, PAUL FRIEDMAN, WILLIAM LINDSAY WILLIAMS, WILLIAM P. SHAW, JR., PRENTICE W. THOMAS, RICHARD D. TANNEHILL, PAUL M. BYRNE, DAVID R. BAKER, CHARLES MORGAN, JR., and GEORGE PEACH TAYLOR, for themselves jointly and severally, and for all others similarly situated,

Plaintiffs,

R. E. FARR, MARSHALL MEADOWS, JACK HOPPING, JACK RYAN, MAX W. MORGAN, DAVID J. VANN, ROBERT S. VANCE, RICHARD P. HUMPHREY, JR., JOHN W. McCONNELL, JR., JOSEPH N. LANGAN, WILLIAM M. WILLIAMS, JR., and GARET VAN ANTWERP,

Intervening Plaintiffs,

versus

BETTYE FRINK, Secretary of State of the State of Alabama; HARRELL HAMMONDS, Judge of Probate of Lowndes County, Alabama; JOHN A. SANKEY, Judge of Probate of Montgomery County, Alabama; J. PAUL MEEKS, Judge of Probate of Jefferson County, Alabama; JOHN GRENIER, Chairman of the Alabama State Republican Executive Committee; PERRY O. HOOPER, Secretary of the Alabama State Republican Executive Committee; ROY MAYHALL, Chairman of the Alabama State Democratic Executive Committee; H. G. RAINS, Secretary of the Alabama State Democratic Executive Committee; MacDONALD GALLION, Attorney General of the State of Alabama,

Defendants.

DECREE.

Pursuant to and in accordance with the opinion of this Court filed herein on July 21, 1962, and for the purpose of effectuating that opinion, it is the ORDER, JUDGMENT and DECREE of this Court:

(1) That the plaintiffs, as citizens of the United States and of the State of Alabama, are denied the equal protection of law accorded them by the Fourteenth Amendment to the Constitution of the United States by virtue of the debasement of their votes since the Legislature of the State of Alabama has failed and continues to fail to reapportion itself as required by law.

(2) That the present apportionment of both Houses of the Legislature of the State of Alabama (which apportionment is pursuant to Article 9, §§ 202 and 203 of the Constitution of Alabama of 1901 and §§ 1 and 2, Title 32, Code of Alabama) constitutes "invidious discrimination" in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

(3) That Act No. 93, Senate Bill 29, commonly referred to as the "67-Senator Amendment," proposing an amendment to the Constitution of Alabama relating to legislative apportionment as passed in the 1962 Special Session of the Legislature for the State of Alabama on July 12, 1962, be and the same is hereby declared to be an unconstitutional proposal within the meaning of the equal protection provisions of the Fourteenth Amendment to the Constitution of the United States.

(4) That Act No. 91, House Bill 59, commonly referred to as the "Crawford-Webb Bill," passed in the 1962 Special Session of the Legislature and approved by the Governor of the State of Alabama on July 12, 1962, be and the same is hereby declared to be an unconstitutional Act within the meaning of the equal protection provisions of the Fourteenth Amendment to the Constitution of the United States.

(5) That Act No. 93, Senate Bill 29 (commonly referred to as the "67-Senator Amendment") and Act No. 91, House Bill 59 (commonly referred to as the "Crawford-Webb Bill"), both having been passed by the 1962 Special Session of the Legislature for the State of Alabama, and each void, invalid and ineffective to the extent that they attempt to correct the denial of the plaintiffs' rights, said denial arising from the debasement of plaintiffs' votes in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

It is the further ORDER, JUDGMENT and DECREE of this Court that Bettye Frink, Secretary of State of the State of Alabama; John Grenier, Chairman of the Alabama State Republican Executive Committee; Perry O. Hooper, Secretary of the Alabama State Republican Executive Committee; Roy Mayhall, Chairman of the Alabama State Democratic Executive Committee; H. G. Rains, Secretary of the Alabama State Democratic Executive Committee; MacDonald Gallion, Attorney General of the State of Alabama; James A. Rice, Judge of Probate of Autauga County, Alabama; W. R. Stuart, Judge of Pro-

bate of Baldwin County, Alabama; George Edward Little, Judge of Probate of Barbour County, Alabama; G. H. Stacy, Judge of Probate of Bibb County, Alabama; W. F. Maynor, Judge of Probate of Blount County, Alabama; Fred D. Main, Judge of Probate of Bullock County, Alabama; James T. Beeland, Judge of Probate of Butler County, Alabama; G. Clyde Brittain, Judge of Probate of Calhoun County, Alabama; O. D. Alsobrook, Judge of Probate of Chambers County, Alabama; Charles A. Formby, Judge of Probate of Cherokee County, Alabama; Jerald Clark White, Judge of Probate of Chilton County, Alabama; Richard Edwin McPhearson, Judge of Probate of Choctaw County, Alabama; W. Cecil Johnson, Judge of Probate of Clark County, Alabama; G. W. Pruet, Judge of Probate of Clay County, Alabama; Thomas Jefferson Baber, Judge of Probate of Cleburne County, Alabama; J. Oscar English, Judge of Probate of Coffee County, Alabama; M. Gresham Hale, Judge of Probate of Colbert County, Alabama; Loyd G. Hart, Judge of Probate of Conecuh County, Alabama; Mac Thomas, Judge of Probate of Coosa County, Alabama; Leland G. Enzor, Judge of Probate of Covington County, Alabama; John M. McSwean, Judge of Probate of Crenshaw County, Alabama; Graf Hart, Judge of Probate of Cullman County, Alabama; Kirke Adams, Judge of Probate of Dale County, Alabama; Bernard A. Reynolds, Judge of Probate of Dallas County, Alabama; J. Frank Croley, Judge of Probate of DeKalb County, Alabama; W. M. (Willie) Cousins, Judge of Probate of Elmore County, Alabama; Reo Kirkland, Judge of Probate of Escambia County, Alabama; Wiley J. Hickman, Judge of Probate of Etowah County, Alabama; Clyde C. Cargile, Judge of Probate of

Fayette County, Alabama; W. W. Weatherford, Judge of Probate of Franklin County, Alabama; R. S. Ward, Judge of Probate of Geneva County, Alabama; James Dennis Herndon, Judge of Probate of Green County, Alabama; Robert K. Greene, Judge of Probate of Hale County, Alabama; Theodore R. Ward, Judge of Probate of Henry County, Alabama; Carl E. Sellers, Judge of Probate of Houston County, Alabama; Robert I. Gentry, Judge of Probate of Jackson County, Alabama; J. Paul Meeks, Judge of Probate of Jefferson County, Alabama; Victor C. Paul, Judge of Probate of Lamar County, Alabama; Estes R. Flynt, Judge of Probate of Lauderdale County, Alabama; Isaac Johnson, Jr., Judge of Probate of Lawrence County, Alabama; Ira H. Weissinger, Judge of Probate of Lee County, Alabama; Mason Clifton Freeman, Judge of Probate of Limestone County, Alabama; Harrell Hammonds, Judge of Probate of Lowndes County, Alabama; William Varner, Judge of Probate of Macon County, Alabama; Ashford Todd, Judge of Probate of Madison County, Alabama; R. J. Westbrook, Judge of Probate of Marengo County, Alabama; Frank Pearce, Judge of Probate of Marion County, Alabama; Jesse Epps Corbin, Judge of Probate of Marshall County, Alabama; Vernol R. Jansen, Judge of Probate of Mobile County, Alabama; Eugene T. Millsap, Judge of Probate of Monroe County, Alabama; John A. Sankey, Judge of Probate of Montgomery County, Alabama; T. C. Almon, Judge of Probate of Morgan County, Alabama; David S. Lee, Judge of Probate of Perry County, Alabama; R. B. Harris, Judge of Probate of Pickens County, Alabama; Ben Reeves, Judge of Probate of Pike County, Alabama; Stell Benefield, Judge of Probate of Randolph County, Alabama;

J. Shannon Burch, Judge of Probate of Russell County, Alabama; Hoyt B. Hamilton, Judge of Probate of Saint Clair County, Alabama; Conrad M. Fowler, Judge of Probate of Shelby County, Alabama; Wilbur Elisha Dearman, Judge of Probate of Sumter County, Alabama; William F. Killough, Judge of Probate of Talladega County, Alabama; Charles C. Adams, Judge of Probate of Tallapoosa County, Alabama; David M. Cochrane, Judge of Probate of Tuscaloosa County, Alabama; Nelson U. Allen, Judge of Probate of Walker County, Alabama; Jonn G. Kimbrough, Judge of Probate of Washington County, Alabama; William Dannelly, Judge of Probate of Wilcox County, Alabama; and Loyd H. McDonald, Judge of Probate of Winston County, Alabama, be and each is enjoined and restrained from furnishing forms for nominations, from receiving nominations, petitions and papers, from certifying nominations, nominees, or elections, and from any other act necessary to the holding of elections, including primary elections, for members of the Alabama Legislature in districts as established by Article 9, §§ 202 and 203 of the Constitution of Alabama of 1901 and §§ 1 and 2, Title 32, Code of Alabama, except in accordance with the order and opinion of this Court filed herein on July 21, 1962 and except and in accordance with the apportionment of the Alabama Legislature as hereinafter specifically set out.

It is the further ORDER, JUDGMENT and DECREE of this Court:

(1) That the membership of the House of Representatives for the State of Alabama, effective on the day

after the general election to be held in November, 1962, be and the same is hereby apportioned as follows:

The County of Jefferson shall have and elect seventeen representatives; the County of Mobile shall have and elect eight representatives; the County of Montgomery shall have and elect four representatives; the Counties of Calhoun, Etowah, Madison and Tuscaloosa shall each have and elect three representatives; the Counties of Dallas, Lauderdale, Morgan, Talladega and Walker shall each have and elect two representatives; and the remaining counties of the State of Alabama shall each have and elect one representative.

(2) That the Senate of the State of Alabama be and the same is hereby apportioned as follows:

First District: The Counties of Lauderdale and Limestone.

Second District: The Counties of Lawrence and Morgan.

Third District: The Counties of Cullman and Winston.

Fourth District: The County of Madison.

Fifth District: The Counties of Jackson and Marshall.

Sixth District: The County of Etowah.

Seventh District: The County of Calhoun.

Eighth District: The County of Talladega.

Ninth District: The Counties of Randolph and Chambers.

Tenth District: The Counties of Elmore and Tallapoosa.

Eleventh District: The County of Tuscaloosa.

Twelfth District: The Counties of Fayette and Walker.

Thirteenth District: The County of Jefferson.

Fourteenth District: The Counties of Pickens and Lamar.

Fifteenth District: The Counties of Autauga, Chilton and Shelby.

Sixteenth District: The Counties of Monroe and Wilcox.

Seventeenth District: The Counties of Butler, Covington and Conecuh.

Eighteenth District: The Counties of Bibb and Perry.

Nineteenth District: The Counties of Clarke, Choctaw and Washington.

Twentieth District: The Counties of Marengo and Sumter.

Twenty-first District: The Counties of Baldwin and Escambia.

Twenty-second District: The Counties of Blount and Saint Clair.

Twenty-third District: The Counties of Dale and Geneva.

Twenty-fourth District: The Counties of Barbour and Pike.

Twenty-fifth District: The Counties of Coffee and Crenshaw.

Twenty-sixth District: The Counties of Bullock and Macon.

Twenty-seventh District: The Counties of Lee and Russell.

Twenty-eighth District: The County of Montgomery.

Twenty-ninth District: The Counties of Cherokee and DeKalb.

Thirtieth District: The Counties of Dallas and Lowndes.

Thirty-first District: The Counties of Colbert, Franklin and Marion.

Thirty-second District: The Counties of Greene and Hale.

Thirty-third District: The County of Mobile.

Thirty-fourth District: The Counties of Coosa, Clay and Cleburne.

Thirty-fifth District: The Counties of Henry and Houston.

(3) That the apportionment of the Alabama Legislature, both the House of Representatives and the Senate, as herein ordered and directed, shall be effective upon the filing of this decree, with the terms of office of the new legislative seats herein created to commence on the day after the general election to be held in November, 1962.

(4) That the officials heretofore elected to either the House of Representatives or the Senate for the State of Alabama from counties and/or senatorial districts that are herein altered, changed or eliminated, shall continue to serve as such elected officials until the expiration of the terms of office of said senators and representatives on the day after the general election to be held in November, 1962.

(5) That the seats—both in the House of Representatives and the Senate for the State of Alabama—that are herein ordered to be eliminated, not be refilled after the present terms of office, of said presently elected officials to said offices, expire in November, 1962.

It is the further ORDER, JUDGMENT and DECREE of this Court that Bettye Frink, Secretary of State of the State of Alabama; John Grenier, Chairman of the

Alabama State Republican Executive Committee; Perry O. Hooper, Secretary of the Alabama State Republican Executive Committee; Roy Mayhall, Chairman of the Alabama State Democratic Executive Committee; H. G. Rains, Secretary of the Alabama State Democratic Executive Committee (in those counties and districts where said political parties desire to select and nominate candidates); MacDonald Gallion, Attorney General of the State of Alabama; and each of the probate judges in the State of Alabama as hereinafter named, their agents, employees, and successors in office, be and each is hereby, separately and severally, DIRECTED and ENJOINED to select and nominate—either by primary as authorized by House Bill 130, signed into law on July 23, 1962, or by political-party committee action that may be authorized by the laws of the State of Alabama—and provide for the election in the general election to be held in November, 1962, of the members of the House of Representatives and members of the Senate for the State of Alabama as follows and not otherwise:

(1) *Autauga County:* Judge of Probate, James A. Rice, Prattville; one House member and, with Shelby and Chilton Counties, one Senate member for the Fifteenth Senatorial District.

(2) *Baldwin County:* Judge of Probate, W. R. Stuart, Bay Minette; one House member and, with Escambia County, one Senate member for the Twenty-first Senatorial District.

(3) *Barbour County:* Judge of Probate, George Edward Little, Clayton; one House member and, with Pike County, one Senate member for the Twenty-fourth Senatorial District.

(4) *Bibb County:* Judge of Probate, G. H. Stacy, Centerville; one House member and, with Perry County, one Senate member for the Eighteenth Senatorial District.

(5) *Blount County:* Judge of Probate, W. F. Maynor, Oneonta; one House member and, with Saint Clair County, one Senate member for the Twenty-second Senatorial District.

(6) *Bullock County:* Judge of Probate, Fred D. Main, Union Springs; one House member and, with Macon County, one Senate member for the Twenty-sixth Senatorial District.

(7) *Butler County:* Judge of Probate, James T. Beeland, Greenville; one House member and, with Conecuh and Covington Counties, one Senate member for the Seventeenth Senatorial District.

(8) *Calhoun County:* Judge of Probate, G. Clyde Brittain, Anniston; three House members and one Senate member for the Seventh Senatorial District.

(9) *Chambers County:* Judge of Probate, O. D. Alsobrook, LaFayette; one House member and, with Randolph County, one Senate member for the Ninth Senatorial District.

(10) *Cherokee County:* Judge of Probate, Charles A. Formby, Centre; one House member and, with DeKalb County, one Senate member for the Twenty-ninth Senatorial District.

(11) *Chilton County:* Judge of Probate, Jerald Clark White, Clanton; one House member and, with Autauga and Shelby Counties, one Senate member for the Fifteenth Senatorial District.

(12) *Choctaw County:* Judge of Probate, Richard Edwin McPhearson, Butler; one House member and, with Clarke and Washington Counties, one Senate member for the Nineteenth Senatorial District.

(13) *Clarke County:* Judge of Probate, W. Cecil Johnson, Grove Hill; one House member and, with Choctaw and Washington Counties, one Senate member for the Nineteenth Senatorial District.

(14) *Clay County:* Judge of Probate, G. W. Pruet, Ashland; one House member and, with Cleburne and Coosa Counties, one Senate member for the Thirty-fourth Senatorial District.

(15) *Cleburne County:* Judge of Probate, Thomas Jefferson Baber, Heflin; one House member and, with Clay and Coosa Counties, one Senate member for the Thirty-fourth Senatorial District.

(16) *Coffee County:* Judge of Probate, J. Oscar English, Elba; one House member and, with Crenshaw County, one Senate member for the Twenty-fifth Senatorial District.

(17) *Colbert County:* Judge of Probate, M. Gresham Hale, Tuscumbia; one House member and, with Franklin and Marion Counties, one Senate member for the Thirty-first Senatorial District.

(18) *Conecuh County:* Judge of Probate, Loyd G. Hart, Evergreen; one House member and, with Butler and Covington Counties, one Senate member for the Seventeenth Senatorial District.

(19) *Coosa County:* Judge of Probate, Mac Thomas, Rockford; one House member and, with Clay and Cleburne Counties, one Senate member for the Thirty-fourth Senatorial District.

(20) *Covington County:* Judge of Probate, Leland G. Enzor, Andalusia; one House member and, with Butler and Conecuh Counties, one Senate member for the Seventeenth Senatorial District.

(21) *Crenshaw County:* Judge of Probate, John M. McSwean, Luverne; one House member and, with Coffee County, one Senate member for the Twenty-fifth Senatorial District.

(22) *Cullman County:* Judge of Probate, Graf Hart, Cullman; one House member and, with Winston County, one Senate member for the Third Senatorial District.

(23) *Dale County:* Judge of Probate, Kirke Adams, Ozark; one House member and, with Geneva County, one Senate member for the Twenty-third Senatorial District.

(24) *Dallas County:* Judge of Probate, Bernard A. Reynolds, Selma; two House members and, with Lowndes County, one Senate member for the Thirtieth Senatorial District.

(25) *DeKalb County:* Judge of Probate, J. Frank Croley, Fort Payne; one House member and, with Cherokee County, one Senate member for the Twenty-ninth Senatorial District.

(26) *Elmore County:* Judge of Probate, W. M. (Willie) Cousins, Wetumpka; one House member and, with Tallapoosa County, one Senate member for the Tenth Senatorial District.

(27) *Escambia County:* Judge of Probate, Reo Kirkland, Brewton; one House member and, with Baldwin County, one Senate member for the Twenty-first Senatorial District.

(28) *Etowah County:* Judge of Probate, Wiley J. Hickman, Gadsden; three House members and one Senate member for the Sixth Senatorial District.

(29) *Fayette County:* Judge of Probate, Clyde C. Cargile, Fayette; one House member and, with Walker County, one Senate member for the Twelfth Senatorial District.

(30) *Franklin County:* Judge of Probate, W. W. Weatherford, Russellville; one House member and, with Colbert and Marion Counties, one Senate member for the Thirty-first Senatorial District.

(31) *Geneva County:* Judge of Probate, R. S. Ward, Geneva; one House member and, with Dale County, one Senate member for the Twenty-third Senatorial District.

(32) *Greene County:* Judge of Probate, James Dennis Herndon, Eutaw; one House member and, with Hale County, one Senate member for the Thirty-second Senatorial District.

(33) *Hale County:* Judge of Probate, Robert K. Greene, Greensboro; one House member and, with Greene County, one Senate member for the Thirty-second Senatorial District.

(34) *Henry County:* Judge of Probate, Theodore R. Ward, Abbeville; one House member and, with Houston County, one Senate member for the Thirty-fifth Senatorial District.

(35) *Houston County:* Judge of Probate, Carl E. Sellers, Dothan; one House member and, with Henry County, one Senate member for the Thirty-fifth Senatorial District.

(36) *Jackson County:* Judge of Probate, Robert I. Gentry, Scottsboro; one House member and, with Marshall County, one Senate member for the Fifth Senatorial District.

(37) *Jefferson County:* Judge of Probate, J. Paul Meeks, Birmingham; seventeen House members and one Senate member for the Thirteenth Senatorial District.

(38) *Lamar County:* Judge of Probate, Victor C. Paul, Vernon; one House member and, with Pickens County, one Senate member for the Fourteenth Senatorial District.

(39) *Lauderdale County:* Judge of Probate, Estes R. Flynt, Florence; two House members and, with Limestone County, one Senate member for the First Senatorial District.

(40) *Lawrence County:* Judge of Probate, Isaac Johnson, Jr., Moulton; one House member and, with Morgan County, one Senate member for the Second Senatorial District.

(41) *Lee County:* Judge of Probate, Ira H. Weissinger, Opelika; one House member and, with Russell County, one Senate member for the Twenty-seventh Senatorial District.

(42) *Limestone County:* Judge of Probate, Mason Clifton Freeman, Athens; one House member and, with Lauderdale County, one Senate member for the First Senatorial District.

(43) *Lowndes County:* Judge of Probate, Harrell Hammonds, Hayneville; one House member and, with Dallas County, one Senate member for the Thirtieth Senatorial District.

(44) *Macon County:* Judge of Probate, William Varner, Tuskegee; one House member and, with Bullock County, one Senate member for the Twenty-sixth Senatorial District.

(45) *Madison County:* Judge of Probate, Ashford Todd, Huntsville; three House members and one Senate member for the Fourth Senatorial District.

(46) *Marengo County:* Judge of Probate, R. J. Westbrook, Linden; one House member and, with Sumter County, one Senate member for the Twentieth Senatorial District.

(47) *Marion County:* Judge of Probate, Frank Pearce, Hamilton; one House member and, with Colbert and Franklin Counties, one Senate member for the Thirty-first Senatorial District.

(48) *Marshall County:* Judge of Probate, Jesse Epps Corbin, Guntersville; one House member and, with Jackson County, one Senate member for the Fifth Senatorial District.

(49) *Mobile County:* Judge of Probate, Vernol R. Jansen, Mobile; eight House members and one Senate member for the Thirty-third Senatorial District.

(50) *Monroe County:* Judge of Probate, Eugene T. Millsap, Monroeville; one House member and, with Wilcox County, one Senate

member for the Sixteenth Senatorial District.

(51) *Montgomery County:* Judge of Probate, John A. Sankey, Montgomery; four House members and one Senate member for the Twenty-eighth Senatorial District.

(52) *Morgan County:* Judge of Probate, T. C. Almon, Decatur; two House members and, with Lawrence County, one Senate member for the Second Senatorial District.

(53) *Perry County:* Judge of Probate, David S. Lee, Marion; one House member and, with Bibb County, one Senate member for the Eighteenth Senatorial District.

(54) *Pickens County:* Judge of Probate, R. B. Harris, Carrollton; one House member and, with Lamar County, one Senate member for the Fourteenth Senatorial District.

(55) *Pike County:* Judge of Probate, Ben Reeves, Troy; one House member and, with Barbour County, one Senate member for the Twenty-fourth Senatorial District.

(56) *Randolph County:* Judge of Probate, Stell Benefield, Wedowee; one House member and, with Chambers County, one Senate member for the Ninth Senatorial District.

(57) *Russell County:* Judge of Probate, J. Shannon Burch, Phenix City; one House member and, with Lee County, one Senate member for the Twenty-seventh Senatorial District.

(58) *Saint Clair County:* Judge of Probate, Hoyt B. Hamilton, Ashville; one House member and, with Blount County, one Senate member for the Twenty-second Senatorial District.

(59) *Shelby County:* Judge of Probate, Conrad M. Fowler, Columbiana; one House member and, with Autauga and Chilton Counties, one Senate member for the Fifteenth Senatorial District.

(60) *Sumter County:* Judge of Probate, Wilbur Elisha Dearman, Livingston; one House member and, with Marengo County, one Senate member for the Twentieth Senatorial District.

(61) *Talladega County:* Judge of Probate, William F. Killough, Talladega; two House members and one Senate member for the Eight Senatorial District.

(62) *Tallapoosa County:* Judge of Probate, Charles C. Adams, Dadeville; one House member and, with Elmore County, one Senate member for the Tenth Senatorial District.

(63) *Tuscaloosa County:* Judge of Probate, David M. Cochrane, Tuscaloosa; three House members and one Senate member for the Eleventh Senatorial District.

(64) *Walker County:* Judge of Probate, Nelson U. Allen, Jasper; two House members and, with Fayette County, one Senate member for the Twelfth Senatorial District.

(65) *Washington County:* Judge of Probate, John G. Kimbrough, Chatom; one House member and, with Choctaw and Clarke Counties, one Senate member for the Nineteenth Senatorial District.

(66) *Wilcox County:* Judge of Probate, William Dannelly, Camden; one House member and, with Monroe County, one Senate member for the Sixteenth Senatorial District.

(67) *Winston County:* Judge of Probate, Loyd H. McDonald, Double Springs; one House member and, with Cullman County, one Senate member for the Third Senatorial District.

It is the further ORDER, JUDGMENT and DECREE of this Court that the apportionment of the Alabama Legislature as herein ordered remain in effect without change, except by order of this Court, until the Legislature of the State of Alabama reapportions itself in accordance with the equal protection provisions of the Fourteenth Amendment to the Constitution of the United States, which nothing in this decree shall prevent it from doing; such action of the Legislature, when taken, being subject to review by this Court.

It is the further ORDER, JUDGMENT and DECREE of this Court that Bettye Frink, Secretary of State of the State of Alabama; John Grenier, Chairman of the Alabama State Republican Executive Committee; Perry O. Hooper, Secretary of the Alabama State Republican

Executive Committee; Roy Mayhall, Chairman of the Alabama State Democratic Executive Committee; H. G. Rains, Secretary of the Alabama State Democratic Executive Committee; MacDonald Gallion, Attorney General of the State of Alabama; James A. Rice, Judge of Probate of Autauga County, Alabama; W. R. Stuart, Judge of Probate of Baldwin County, Alabama; George Edward Little, Judge of Probate of Barbour County, Alabama; G. H. Stacy, Judge of Probate of Bibb County, Alabama; W. F. Maynor, Judge of Probate of Blount County, Alabama; Fred D. Main, Judge of Probate of Bullock County, Alabama; James T. Beeland, Judge of Probate of Butler County, Alabama; G. Clyde Brittain, Judge of Probate of Calhoun County, Alabama; O. D. Alsobrook, Judge of Probate of Chambers County, Alabama; Charles A. Formby, Judge of Probate of Cherokee County, Alabama; Jerald Clark White, Judge of Probate of Chilton County, Alabama; Richard Edwin McPhearson, Judge of Probate of Choctaw County, Alabama; W. Cecil Johnson, Judge of Probate of Clarke County, Alabama; G. W. Pruet, Judge of Probate of Clay County, Alabama; Thomas Jefferson Baber, Judge of Probate of Cleburne County, Alabama; J. Oscar English, Judge of Probate of Coffee County, Alabama; M. Gresham Hale, Judge of Probate of Calhoun County, Alabama; Loyd G. Hart, Judge of Probate of Conecuh County, Alabama; Mac Thomas, Judge of Probate of Coosa County, Alabama; Leland G. Enzor, Judge of Probate of Covington County, Alabama; John M. McSwean, Judge of Probate of Crenshaw County, Alabama; Graf Hart, Judge of Probate of Cullman County, Alabama; Kirke Adams, Judge of Probate of Dale

County, Alabama; Bernard A. Reynolds, Judge of Probate of Dallas County, Alabama; J. Frank Croley, Judge of Probate of DeKalb County, Alabama; W. M. (Willie) Cousins, Judge of Probate of Elmore County, Alabama; Reo Kirkland, Judge of Probate of Escambia County, Alabama; Wiley J. Hickman, Judge of Probate of Etowah County, Alabama; Clyde C. Cargile, Judge of Probate of Fayette County, Alabama; W. W. Weatherford, Judge of Probate of Franklin County, Alabama; R. S. Ward, Judge of Probate of Geneva County, Alabama; James Dennis Herndon, Judge of Probate of Greene County, Alabama; Robert K. Greene, Judge of Probate of Hale County, Alabama; Theodore R. Ward, Judge of Probate of Henry County, Alabama; Carl E. Sellers, Judge of Probate of Houston County, Alabama; Robert I. Gentry, Judge of Probate of Jackson County, Alabama; J. Paul Meeks, Judge of Probate of Jefferson County, Alabama; Victor C. Paul, Judge of Probate of Lamar County, Alabama; Estes R. Flynt, Judge of Probate of Lauderdale County, Alabama; Isaac Johnson, Jr., Judge of Probate of Lawrence County, Alabama; Ira H. Weissinger, Judge of Probate of Lee County, Alabama; Mason Clifton Freeman, Judge of Probate of Limestone County, Alabama; Harrell Hammonds, Judge of Probate of Lowndes County, Alabama; William Varner, Judge of Probate of Macon County, Alabama; Ashford Todd, Judge of Probate of Madison County, Alabama; R. J. Westbrook, Judge of Probate of Marengo County, Alabama; Frank Pearce, Judge of Probate of Marion County, Alabama; Jesse Epps Corbin, Judge of Probate of Marshall County, Alabama; Vernol R. Jansen, Judge of Probate of Mobile County, Alabama;

Eugene T. Millsap, Judge of Probate of Monroe County, Alabama; John A. Sankey, Judge of Probate of Montgomery County, Alabama; T. C. Almon, Judge of Probate of Morgan County, Alabama; David S. Lee, Judge of Probate of Perry County, Alabama; R. B. Harris, Judge of Probate of Pickens County, Alabama; Ben Reeves, Judge of Probate of Pike County, Alabama; Stell Benefield, Judge of Probate of Randolph County, Alabama; J. Shannon Burch, Judge of Probate of Russell County, Alabama; Hoyt B. Hamilton, Judge of Probate of Saint Clair County, Alabama; Conrad M. Fowler, Judge of Probate of Shelby County, Alabama; Wilbur Elisha Dearman, Judge of Probate of Sumter County, Alabama; William F. Killough, Judge of Probate of Talladega County, Alabama; Charles C. Adams, Judge of Probate of Tallapoosa County, Alabama; David M. Cochrane, Judge of Probate of Tuscaloosa County, Alabama; Nelson U. Allen, Judge of Probate of Walker County, Alabama; John G. Kimbrough, Judge of Probate of Washington County, Alabama; William Dannelly, Judge of Probate of Wilcox County, Alabama; and Loyd H. McDonald, Judge of Probate of Winston County, Alabama, take the necessary and appropriate action within the time prescribed by the laws of the State of Alabama to put into effect the apportionment of the Alabama Legislature as herein ordered. Said officials and each is separately and severally enjoined and restrained from taking any action that will hinder or obstruct, or tend to hinder or obstruct the effectuation of this Court's action in apportioning the Legislature of the State of Alabama as herein set out.

It is the further ORDER, JUDGMENT and DECREE of this Court that jurisdiction of this cause be and the same is hereby retained for the purpose of issuing any and all additional orders that may become necessary or appropriate in the judgment of this Court.

It is further ORDERED that the United States Marshal for this district serve personally, or cause to be served personally, a copy of the opinion of this Court filed herein on July 21, 1962, and a copy of this order and decree, on each of the following:

Bettye Frink, Secretary of State of the State of Alabama; John Grenier, Chairman of the Alabama State Republican Executive Committee; Perry O. Hooper, Secretary of the Alabama State Republican Executive Committee; Roy Mayhall, Chairman of the Alabama State Democratic Executive Committee; H. G. Rains, Secretary of the Alabama State Democratic Executive Committee; and MacDonald Gallion, Attorney General of the State of Alabama.

It is further ORDERED that the United States Marshal for this district serve or cause to be served by certified mail a copy of the opinion of this Court entered herein on July 21, 1962, and a copy of this order and decree on the judge of probate for each county in the State of Alabama.

The costs incurred in this proceeding are hereby ORDERED to be and they are taxed against the defendants, for which execution may issue.

Done, this the 25th day of July, 1962.

(S.) RICHARD T. RIVES,
United States Circuit Judge,
(S.) DANIEL H. THOMAS,
United States District Judge,
(S.) FRANK M. JOHNSON, JR.,
United States District Judge.

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION.

CIVIL ACTION No. 1744-N.

M. O. SIMS, FRED A. BEAM, WYLIE JOHNSON, G. R. SOUTHARD, MILES S. LEE, PAUL FRIEDMAN, WILLIAM LINDSAY WILLIAMS, WILLIAM P. SHAW, JR., PRENTICE W. THOMAS, RICHARD D. TANNEHILL, PAUL M. BYRNE, DAVID R. BAKER, CHARLES MORGAN, JR., and GEORGE PEACH TAYLOR, for themselves jointly and severally, and for all others similarly situated,

Plaintiffs,

R. E. FARR, MARSHALL MEADOWS, JACK HOPPING, JACK RYAN, MAX W. MORGAN, DAVID J. VANN, ROBERT S. VANCE, RICHARD P. HUMPHREY, JR., JOHN W. McCONNELL, JR., JOSEPH N. LANGAN, WILLIAM M. WILLIAMS, JR., and GARET VAN ANTWERP,

Intervening Plaintiffs,

versus

BETTYE FRINK, Secretary of State of the State of Alabama; HARRELL HAMMONDS, Judge of Probate of Lowndes County, Alabama; JOHN A. SANKEY, Judge of Probate of Montgomery County, Alabama; J. PAUL MEEKS, Judge of Probate of Jefferson County, Alabama; JOHN GRENIER, Chairman of the Alabama State Republican Executive Committee; PERRY O. HOOPER, Secretary of the Alabama State Republican Executive Committee; ROY MAYHALL, Chairman of the Alabama State Democratic Executive Committee; H. G. RAINS, Secretary of the Alabama State Democratic Executive Committee; MacDONALD GALLION, Attorney General of the State of Alabama,

Defendants.

WRIT OF INJUNCTION.

TO: BETTYE FRINK, Secretary of State of the State of Alabama,
JOHN GRENIER, Chairman of the Alabama State Republican Executive Committee,
PERRY O. HOOPER, Secretary of the Alabama State Republican Executive Committee,
ROY MAYHALL, Chairman of the Alabama State Democratic Executive Committee,
H. G. RAINS, Secretary of the Alabama State Democratic Executive Committee,
MacDONALD GALLION, Attorney General of the State of Alabama,
JAMES A. RICE, Judge of Probate of Autauga County, Alabama,
W. R. STUART, Judge of Probate of Baldwin County, Alabama,
GEORGE EDWARD LITTLE, Judge of Probate of Barbour County, Alabama,
G. H. STACY, Judge of Probate of Bibb County, Alabama,
W. F. MAYNOR, Judge of Probate of Blount County, Alabama,
FRED D. MAIN, Judge of Probate of Bullock County, Alabama,
JAMES T. BEELAND, Judge of Probate of Butler County, Alabama,
G. CLYDE BRITTAIN, Judge of Probate of Calhoun County, Alabama,
O. D. ALSOBROOK, Judge of Probate of Chambers County, Alabama,

CHARLES A. FORMBY, Judge of Probate of Cherokee County, Alabama,

JERALD CLARK WHITE, Judge of Probate of Chilton County, Alabama,

RICHARD EDWIN McPHEARSON, Judge of Probate of Choctaw County, Alabama,

W. CECIL JOHNSON, Judge of Probate of Clarke County, Alabama,

G. W. PRUET, Judge of Probate of Clay County, Alabama,

THOMAS JEFFERSON BABER, Judge of Probate of Cleburne County, Alabama,

J. OSCAR ENGLISH, Judge of Probate of Coffee County, Alabama,

M. GRESHAM HALE, Judge of Probate of Colbert County, Alabama,

LOYD G. HART, Judge of Probate of Conecuh County, Alabama,

MAC THOMAS, Judge of Probate of Coosa County, Alabama,

LELAND G. ENZOR, Judge of Probate of Covington County, Alabama,

JOHN M. McSWEAN, Judge of Probate of Crenshaw County, Alabama,

GRAF HART, Judge of Probate of Cullman County, Alabama,

KIRKE ADAMS, Judge of Probate of Dale County, Alabama,

BERNARD A. REYNOLDS, Judge of Probate of Dallas County, Alabama,

J. FRANK CROLEY, Judge of Probate of DeKalb County, Alabama,

W. M. (WILLIE) COUSINS, Judge of Probate of Elmore County, Alabama,

REO KIRKLAND, Judge of Probate of Escambia County, Alabama,

WILEY J. HICKMAN, Judge of Probate of Etowah County, Alabama,

CLYDE C. CARGILE, Judge of Probate of Fayette County, Alabama,

W. W. WEATHERFORD, Judge of Probate of Franklin County, Alabama,

R. S. WARD, Judge of Probate of Geneva County, Alabama,

JAMES DENNIS HERNDON, Judge of Probate of Greene County, Alabama,

ROBERT K. GREENE, Judge of Probate of Hale County, Alabama,

THEODORE R. WARD, Judge of Probate of Henry County, Alabama,

CARL E. SELLERS, Judge of Probate of Houston County, Alabama,

ROBERT I. GENTRY, Judge of Probate of Jackson County, Alabama,

J. PAUL MEEKS, Judge of Probate of Jefferson County, Alabama,

VICTOR C. PAUL, Judge of Probate of Lamar County, Alabama,

ESTES R. FLYNT, Judge of Probate of Lauderdale County, Alabama,

ISAAC JOHNSON, JR., Judge of Probate of Lawrence County, Alabama,

IRA H. WEISSINGER, Judge of Probate of Lee County, Alabama,

MASON CLIFTON FREEMAN, Judge of Probate of Limestone County, Alabama,

HARRELL HAMMONDS, Judge of Probate of Lowndes County, Alabama,

WILLIAM VARNER, Judge of Probate of Macon County, Alabama,

ASHFORD TODD, Judge of Probate of Madison County, Alabama,

R. J. WESTBROOK, Judge of Probate of Marengo County, Alabama,

FRANK PEARCE, Judge of Probate of Marion County, Alabama,

JESSE EPPS CORBIN, Judge of Probate of Marshall County, Alabama,

VERNOL R. JANSEN, Judge of Probate of Mobile County, Alabama,

EUGENE T. MILLSAP, Judge of Probate of Monroe County, Alabama,

JOHN A. SANKEY, Judge of Probate of Montgomery County, Alabama,

T. C. ALMON, Judge of Probate of Morgan County, Alabama,

DAVID S. LEE, Judge of Probate of Perry County, Alabama,

R. B. HARRIS, Judge of Probate of Pickens County, Alabama,

BEN REEVES, Judge of Probate of Pike County, Alabama,

STELL BENEFIELD, Judge of Probate of Randolph County, Alabama,

J. SHANNON BURCH, Judge of Probate of Russell County, Alabama,

HOYT B. HAMILTON, Judge of Probate of Saint Clair County, Alabama,

CONRAD M. FOWLER, Judge of Probate of Shelby County, Alabama,

WILBUR ELISHA DEARMAN, Judge of Probate of Sumter County, Alabama,

WILLIAM F. KILLOUGH, Judge of Probate of Talladega County, Alabama,

CHARLES C. ADAMS, Judge of Probate of Tallapoosa County, Alabama,

DAVID M. COCHRANE, Judge of Probate of Tuscaloosa County, Alabama,

NELSON U. ALLEN, Judge of Probate of Walker County, Alabama,

JOHN G. KIMBROUGH, Judge of Probate of Washington County, Alabama,

WILLIAM DANNELLY, Judge of Probate of Wilcox County, Alabama, and

LOYD H. McDONALD, Judge of Probate of Winston County, Alabama.

TAKE NOTICE that you and each of you, your successors in office, agents, servants, employees and persons acting on your behalf, be and you are hereby ORDERED and ENJOINED as more particularly set out in the opinion of this Court made and filed herein on July 21, 1962, and in the order and decree of this Court made and entered herein on this date.

Done, this the 25th day of July, 1962.

R. C. DOBSON,
Clerk of the District Court of the United States for the Middle District of Alabama.

APPENDIX No. 2.

TABLE OF STATES APPORTIONED UNDER PROVISIONS REQUIRING ONE SENATOR PER DISTRICT OR LIMITING A SENATORIAL DISTRICT TO ONE SENATOR

AUTHORITY: **BOOK OF THE STATES 1962-63**

Alabama	Nevada
California	New Jersey
Connecticut	New Mexico
Florida	South Carolina
Georgia	Texas
Idaho	Vermont
Iowa	Wyoming
Montana	

TABLE OF STATES REQUIRING HOUSE REPRESENTATION OF NOT LESS THAN ONE PER COUNTY

AUTHORITY: **BOOK OF THE STATES 1962-63**

Alabama	New Mexico
Arkansas	New York

Hawaii	North Carolina
Idaho	North Dakota
Iowa	Ohio
Kansas	Pennsylvania
Mississippi	South Carolina
Missouri	Utah
Montana	West Virginia
New Jersey	Wyoming

APPENDIX No. 3.

COMPARISON: HOUSE APPORTIONMENT UNDER PROVISIONS OF ACT No. 91; METHOD OF EQUAL PROPORTIONS; AND METHOD OF SMALLEST DIVISORS

County	Crawford-Webb Act, Act 91	SDM	EPM
Jefferson	12	14	17
Mobile	6	7	8
Montgomery	4	4	4
Calhoun	3	3	3
Etowah	3	3	3
Madison	3	3	3
Tuscaloosa	3	3	3
Baldwin	2	2	1
Colbert	2	1	1
Cullman	2	1	1
Dallas	2	2	2

Houston	2	2	1
Lauderdale	2	2	2
Lee	2	2	1
Marshall	2	2	1
Morgan	2	2	2
Russell	2	1	1
Talladega	2	2	2
Walker	2	2	2

Balance of counties one each under all apportionment methods.

APPENDIX No. 4.

TABLE OF TEN INDUSTRIAL COUNTIES SHOWING CITY POPULATION AS PER CENT OF TOTAL COUNTY POPULATION

County	City	Population	Co. Pop.	% Rounded of Total Pop.
Jefferson	Birmingham	340,887	634,864	54%
Mobile	Mobile	202,779	314,301	64%
Montgomery	Montgomery	134,393	169,210	79%
Madison	Huntsville	72,365	117,348	61%
Tuscaloosa	Tuscaloosa	63,370	109,047	58%
Etowah	Gadsden	58,088	96,980	59%
Calhoun			95,878	39%
	(Oxford	3,603		
contiguous	(			
	(Anniston	33,657		
		37,260		

(Boundaries extended since census to increase population of Oxford)

Lauderdale			61,622	
Colbert			46,506	
			108,128	
contiguous	Florence	31,649		
	Sheffield	13,499		
	Tuscumbia	8,994		
		54,142		50%
Morgan	Decatur	29,217	60,454	

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1962.

No. [redacted] 37

DAVID J. VANN and ROBERT S. VANCE, Appellants,

versus

BETTYE FRINK, Secretary of State of the State of Alabama; HARRELL HAMMONDS, Judge of Probate of Lowndes County, Alabama; JOHN A. SANKEY, Judge of Probate of Montgomery County, Alabama; J. PAUL MEEKS, Judge of Probate of Jefferson County, Alabama; JOHN GRENIER, Chairman of the Alabama State Republican Executive Committee; PERRY O. HOOPER, Secretary of the Alabama State Republican Executive Committee; H. G. RAINS, Secretary of the Alabama State Democratic Executive Committee; MacDONALD GALLION, Attorney General of the State of Alabama; ROY MAYHALL, Chairman of the Alabama State Democratic Executive Committee, Appellees.

On Appeal from the United States District Court for the Middle District of Alabama, Northern Division.

JURISDICTIONAL STATEMENT OF APPELLANTS.

DAVID J. VANN,
2100 Comer Building,
Birmingham, Alabama,
ROBERT S. VANCE,
1703 Comer Building,
Birmingham, Alabama,
C. H. ERSKINE SMITH,
First National Building,
Birmingham, Alabama,
Attorneys for Appellants.

St. Louis Law Printing Co., Inc., 415 N. Eighth Street. CEntral 1-4477.

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Constitution Cited.

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Sec. 198 ..... 3, 4
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Sec. 200 ..... 3, 4
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Miscellaneous Cited.

Compendium on Legislative Reapportionment, Second Edition, National Municipal League, p. iii 5

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1962.

No. .....

DAVID J. VANN and ROBERT S. VANCE, Appellants,

versus

BETTYE FRINK, Secretary of State of the State of Alabama; HARRELL HAMMONDS, Judge of Probate of Lowndes County, Alabama; JOHN A. SANKEY, Judge of Probate of Montgomery County, Alabama; J. PAUL MEEKS, Judge of Probate of Jefferson County, Alabama; JOHN GRENIER, Chairman of the Alabama State Republican Executive Committee; PERRY O. HOOPER, Secretary of the Alabama State Republican Executive Committee; H. G. RAINS, Secretary of the Alabama State Democratic Executive Committee; MacDONALD GALLION, Attorney General of the State of Alabama; ROY MAYHALL, Chairman of the Alabama State Democratic Executive Committee, Appellees.

On Appeal from the United States District Court for the Middle District of Alabama, Northern Division.

JURISDICTIONAL STATEMENT OF APPELLANTS.

OPINIONS BELOW.

This is a cross-appeal by intervening plaintiffs, David J. Vann and Robert S. Vance, individually and as Chairman and Vice-Chairman, respectively, of the Jefferson County Democratic Campaign Committee. The appeal is taken from the decree of the United States District Court for the Middle District of Alabama, Northern Division, composed of three judges. Said decree was made and

entered on July 25, 1962, pursuant to the court's opinion which was filed on July 21, 1962. The opinion of the District Court (... F. Supp. ...) is not yet reported but it and the Court's decree appear as Appendix No. 1 to the separate jurisdictional statement of Appellants in O. T. No. 501, **Reynolds, et al. v. Sims, et al.**, which was filed in this Court on October 12, 1962.

BASIS OF JURISDICTION.

I.

The proceeding below was instituted by the original plaintiffs below on their own behalf and on behalf of all persons similarly situated. The complaint sought a declaration of their rights concerning the apportionment of the Legislature of Alabama and other relief required to insure to them Equal Protection of the Laws theretofore denied them. Cross-Appellants and others intervened, asked more specific relief, and were added as additional parties plaintiff.

All parties plaintiff are citizens, taxpayers, and voters of the State of Alabama and are residents of three of its most populous counties. Defendants are the public and political party officials who, under Alabama law, control and operate the election processes by which the members of the state legislature are selected.

The complaint sought a declaratory judgment pursuant to Title 28, U. S. C., §§ 2201 and 2202, as well as injunctive relief. Jurisdiction rests on those sections and on Title 42, U. S. C., §§ 1983 and 1988, and on Title 28, U. S. C., § 1343 (3). The case was determined by a panel of three judges convened under Title 28, U. S. C., §§ 2281 and 2284.

II.

The decree from which this cross-appeal was taken was entered on July 25, 1962, following the opinion of the

Court, filed on July 21, 1962. A preliminary opinion, entered on April 14, 1962, is reported at 205 F. Supp. 245. Cross-Appellants filed a Motion for Rehearing and Modification of Proposed Decree on July 25, 1962, in which the questions here presented were presented to the lower court. That motion was denied by order dated July 25, 1962 (Appendix A hereto), wherein the Court stated that all of the issues raised had been fully considered.

Notice of Appeal from said decree was filed in O. T., 1962, No. 501, **Reynolds et al. v. Sims et al.**, supra, on August 17, 1962. Cross-Appellants thereafter filed their separate Notice of Appeal in the United States District Court for the Middle District of Alabama on August 23, 1962.

III.

Jurisdiction of this appeal is believed to be conferred on this Court by Title 28, U. S. C., § 1253.

IV.

Jurisdiction of this appeal is believed to be sustained by the cases of **Baker v. Carr**, 369 U. S. 186; **Scholle v. Hare**, 369 U. S. 429; **W. M. C. A., Inc., et al. v. Simon** (June 11, 1962), . . . U. S. . . . (8 L. Ed. 2d).

V.

Involved in this cross-appeal are §§ 198, 199, 200, and the last sentence of § 284 of the Constitution of Alabama of 1901, all of which appear as Appendix B to this statement.

QUESTIONS PRESENTED.

The Cross-Appellants raise the following questions, all of which they maintain should be answered by this Court in the affirmative:

I.

Were these Appellants entitled to have the decree of the court below, insofar as it provisionally reapportioned the Senate of the State of Alabama, substantially comply with the requirements of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States?

II.

Were these Appellants entitled to a declaration from the court below that, under §§ 200 and 284 of the Constitution of Alabama of 1901 and the Fourteenth Amendment of the Constitution of the United States, the Senate of the State of Alabama must be apportioned so that Senate districts are "as nearly equal to each other in the number of inhabitants as may be"?

III.

In this proceeding should the provisions of the Constitution of Alabama of 1901, and particularly of §§ 198, 199, 200 and 284 thereof, be applied so as to meet the requirements of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States in the light of the distribution of population within the State of Alabama according to the last federal census?

STATEMENT OF THE CASE.

The Alabama Constitution of 1901 (§§ 198, 199, 200, and 284) requires that the apportionment of both houses of the legislature of Alabama be on a population basis, except that under § 198, each of the State's 67 counties, regardless of population, is guaranteed at least one representative in the 106-member lower house.

The duty for such reapportionment is placed on the legislature itself (§§ 199, 200). Alabama courts have held

that other branches of government are powerless to compel the reapportionment required by the State Constitution in the event of the Legislature's failure to act (**Waid v. Pool**, 225 Ala. 441, 51 So. 2d 869). The Constitution contains no provision for popular initiative with respect either to reapportionment or constitutional amendment.

The Alabama Legislature has failed to reapportion itself throughout the entire 61-year period since the adoption of the 1901 Constitution. During that period, a marked population shift has occurred (see: Appendices D and E to the opinion of the District Court). The result is an exaggerated concentration of power in the citizens of some small counties and corresponding under-representation of the citizens of the larger counties. The 1960 census shows that prior to the decree below, control of the Alabama House of Representatives rested with a minimum of 25.7% of the people of the State and that the Senate was controlled by 25.1% (**Compendium on Legislative Reapportionment**, Second Edition, National Municipal League, p. iii). Jefferson County—the most populous county in the state—has almost 20% of the State's population but had only 6.6% of the representation in the lower house of the Legislature and only 2.9% in the Senate.

The amended complaints of the plaintiffs and intervening plaintiffs charged, *inter alia*, that the Alabama Legislature's failure to reapportion itself, as required by the State Constitution, had worked to deny them the equal protection of the law required by the Fourteenth Amendment. The complaints sought a declaratory judgment and such injunctive relief as would effect the apportionment of the Legislature in conformity with equal protection requirements.

The suit was commenced prior to this Court's decision in **Baker v. Carr**, supra, and was continued pending the outcome of that case. On April 14, 1962, the District

Court rendered an opinion on an application for interlocutory injunction in which it noted that the plaintiffs had standing to sue and that a justiciable cause of action, over which the court has jurisdiction, had been stated in the complaint. The hearing was continued until July 16, 1962, to give the Alabama Legislature ample opportunity to reapportion itself and thus avoid the need for further court action.

An extraordinary session of the State Legislature was called. On July 12 and 13, 1962, it adopted two reapportionment plans—one a proposed constitutional amendment, and the other a reapportionment act—neither of which was to take effect until 1966.

Neither the amendment nor the act even purported to base representation in both houses on a population basis. The amendment (called the 67 Senator Amendment) completely removed population as a factor in the upper house and awarded one senator to each county regardless of population. In the 106-member lower house, each county was also given one member regardless of population; only the 39 remaining places were assigned on the basis of population.

The reapportionment act (called the Crawford-Webb Act) was a minimum-change bill which was to take effect only in the event that the amendment failed to achieve popular ratification. The act transferred a few seats in the lower house from the most over-represented to the most under-represented counties. New Senate districts were carefully drawn around the nominees of the May 1962 Democratic primary so as to retain the seats of 34 of the 35 nominees. The act did not purport to meet any population standard in either house.

Apparently contemplating that neither measure would pass the Constitutional test, the Legislature also adopted

an act providing for special primary elections in the event of court-ordered reapportionment.

At its hearing on July 16, 1962, the lower court had before it a motion for interlocutory injunction and a motion for summary judgment. All sworn pleadings and affidavits of plaintiffs and interveners as well as oral testimony and exhibits were received into evidence. The issues submitted included the merits of the amended complaints and the validity of the two measures adopted less than a week previously by the Legislature.

In its opinion of July 21, 1962, the District Court noted that all parties had generally conceded that present apportionment of both houses of the Alabama Legislature constituted invidious discrimination in violation of the Fourteenth Amendment. It so held. With respect to the two measures enacted during the recent extraordinary legislative session, the court held:

> "We find that each of the legislative acts, when considered as a whole, is so obviously discriminatory, arbitrary and irrational that it becomes unnecessary to pursue a detailed development of each of the relevant factors of the test."

Having so found, the court adopted the principle of provisional reapportionment suggested by Cross-Appellants. However, it rejected Cross-Appellants' two specific plans of Senate reapportionment (See Appendices C and D) and adopted as its own plan, a combination of the 67 Senator Amendment lower house and the Crawford-Webb Senate. The court plan was ordered into effect as of the November, 1962, general election by appropriate injunctive order. The court expressed the purpose of holding changes to the minimum necessary to release the stranglehold on the Legislature and in order to permit the Legislature to devise its own permanent reapportionment plan. It held that its plan would not suffice as such permanent

reapportionment. The court refrained from spelling out specific constitutional standards to be applied under permanent reapportionment. However, it retained jurisdiction until the next Legislature shall have had opportunity to enact its own permanent reapportionment plan.

With respect to the House of Representatives, the court's provisional plan of reapportionment allows one member per county regardless of population and allocates the remaining 39 seats under the equal-proportions method of computation. By reason of the ratio in Alabama of number of counties to number of house seats and the population distribution, this is certainly not a true population apportionment—almost two-thirds of the seats are allocated on a county basis without regard to population. Control is thus retained by a small county minority. The District Court's provisional plan for reapportionment of the lower house should effectively break the small county stranglehold in that house, however, and Cross-Appellants do not now challenge that aspect of the court's ruling.

It is the provisional Senate apportionment under the District Court's decree with which this Cross-Appeal is concerned. This apportionment does not substantially comply with any reasonable constitutional standards. No declaration of such standards was made by the Court. In practical effect, the court's order resulted in the shift of only one senate seat from one over-represented district to another over-represented district. Under the special primary bill passed by the Alabama Legislature, the only real change was the transfer of one Senate seat from Lowndes County to a newly created and under-populated senatorial district consisting of Blount and St. Clair Counties. The Court-appointed Senate may be analyzed further as follows:

(a) Whereas the present Senate of Alabama is controlled by 25.1% of the people, the new apportionment

retains control in the hands of a mere 27.6% of the people.

(b) Senate control is held by fewer people than reside in the State's two largest counties alone.

(c) A citizen in Bibb and Perry Counties has a vote worth twenty times that of a citizen in Jefferson County in the State Senate. The votes of citizens in the six smallest districts are worth fifteen or more times that of Jefferson County residents. In 22 districts, the citizens would have eight or more times as much representation as citizens residing in Jefferson County.

The action of the District Court was taken with apparent awareness that although the Supreme Court has clearly indicated that Constitutional standards must be met, it has set out no guidelines with respect to such standards. This situation created the dilemma in which the District Court was obliged to act. In taking action, the District Court expressed serious doubts as to the sufficiency of such action and elected to seek the most moderate steps on which any hope of a permanent solution could conceivably be based.

In argument before the District Court, the Senate sponsor of the Crawford-Webb Act represented to the Court that it was the best measure that could possibly be pushed through the Alabama Legislature as it is presently constituted. Concurrence of both houses is, of course, required and the lower court's decree accomplished virtually nothing insofar as Senate malapportionment is concerned. It, therefore, remains a virtual certainty that no substantial correction of the invidious discrimination which exists in the Alabama Senate can be achieved without further judicial action. The longer such action is postponed the greater the disruption of state government in Alabama will be.

The devaluation of the vote of Jefferson County residents in the State Senate remains roughly comparable to that which existed in **Baker v. Carr**, supra, prior to litigation. In neither of the other cases which have been before this Court, **W. M. C. A., Inc. et al. v. Simon**, supra, and **Scholle v. Hare**, supra, did the degree of invidious discrimination prior to litigation even begin to approach this 20-to-1 ratio. It is, therefore, manifestly clear that if the Court's plan of apportionment had existed in Alabama prior to this time, judicial intervention would have been necessary and the relief similar to that prayed with respect to the Senate would surely have been granted.

In the State Senate to be elected in November 1962, the 634,864 people of Jefferson County, comprising 19.4% of the population of the State, will have only 2.9% of the Senate membership—a feeble weapon to resist the type of discriminatory legislation which has habitually been directed toward the urban areas. One-fifth of the State's population will have less than one-thirtieth of the Senate voice in formulating a permanent plan of legislative apportionment.

The District Court found that the requirements of the Alabama Constitution, as construed by it, require an apportionment of the State Senate, which comports to Fourteenth Amendment standards. The Alabama Constitution requires that Senate districts be as "nearly equal to each other in the number of inhabitants as may be." There is one most nearly mathematically perfect way that the Senate may be apportioned. As an alternative, Cross-Appellants asked the District Court to adopt a proposed provisional apportionment which would involve minimum change (17 of the 35 present Senatorial districts could be retained) and still approach Constitutional requirements by reducing the factor of maximum discrimination to substantially less than 2-to-1. (A mathematical analysis of

both alternatives in the form in which it was presented to the lower court appear as Appendices C and D). The District Court rejected the application of population standards, holding that it:

> "would result in a very drastic reapportionment, and probably place nine counties having over half the population of the state in control of the senate."

It is, of course, the contention of Cross-Appellants that majority rule cannot be "drastic." Unless a majority of the people can elect a majority of the legislature, there can be no Equal Protection of the Laws. The District Court's decree includes a ratio of discrimination in the State Senate of up to 20-to-1 and vests Senate control in approximately one-fourth of the people of the State.

THE QUESTION PRESENTED IS SUBSTANTIAL.

This Cross-Appeal squarely tenders the most important unresolved question involved in pending reapportionment litigation:

> Does the Fourteenth Amendment to the United States Constitution prohibit the creation of electoral districts for one house of a state legislature which result in substantial inequality of popular representation in that house?

In more than one instance, the separate opinions in the three reapportionment cases decided by this Court within the last year have pointed up the need for the resolution of this question. Complications in the Alabama situation —including apportionment of the lower house on a basis other than pure population—make this case especially appropriate for a resolution of this problem which will have broadest application.

The Court below was placed in the uncomfortable position of being required to act yet having no standards to

guide its action. With respect to the State Senate, it sought the most moderate possible step. If, however, Cross-Appellants' contention as to the Fourteenth Amendment be correct, they are forced to a respectful conclusion that the court's decree perpetuates invidious discrimination in violation of the Constitution. Cross-Appellants respectfully suggest that unless this Court resolves the basic issue here presented, protracted litigation and incalculable delay will stand between the citizens of Alabama and the restoration to them of Equal Protection of Laws. State government cannot fulfill its important place in our system of government unless this most basic of all governments is protected as the spokesman of a majority of a state's citizens.

CONCLUSION.

Cross-Appellants respectfully submit that probable jurisdiction should be noted and the case advanced to the argument calendar for full consideration.

DAVID J. VANN,
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Birmingham, Alabama,

ROBERT S. VANCE,
1703 Comer Building,
Birmingham, Alabama,

C. H. ERSKINE SMITH,
First National Building,
Birmingham, Alabama,
Attorneys for Appellants.

Proof of Service.

I, Robert S. Vance, an appellant herein, depose and say that on the ...18 day of October, 1962, I served copies of the foregoing jurisdictional statement on each of the appellees herein and on each of the parties in the court below by mailing copies, via U. S. mail, in duly addressed envelopes with first-class postage prepaid, to their respective attorneys of record, or if none, to them personally, as follows:

1. On Hon. MacDonald Gallion, Attorney General of Alabama, Montgomery, Alabama, Attorney of Record for himself and for Hon. Bettye Frink.

2. On Boswell and Smith, Geneva, Alabama, Attorneys of Record for Judge Harrell Hammonds.

3. On Judge John A. Sankey, Court House, Montgomery, Alabama.

4. On Judge J. Paul Meeks, Court House, Birmingham, Alabama.

5. On Hon. John Grenier, Comer Building, Birmingham, Alabama.

6. On Hon. Perry O. Hooper, Washington Building, Montgomery, Alabama.

7. On Roy D. McCord, Esquire, Gadsden, Alabama, Attorney for Hon. H. G. Rains.

8. On Hon. Roy Mayhall, Court House, Jasper, Alabama.

9. On Charles Morgan, Jr., Esquire, Bank for Savings Building, Birmingham, Alabama, Attorney for original plaintiffs.

10. On John W. McConnell, Jr., Esquire, 1101 Merchants National Bank Building, Mobile, Alabama, Attorney for intervening plaintiffs McConnell et al.

11. On Cooper, Mitch & Crawford, Bank for Savings Building, Birmingham, Alabama, Attorneys for intervening plaintiffs Farr et al.

12. On Thomas G. Gayle, Esquire, 1104½ Water Avenue, Selma, Alabama, Attorney for appellant Reynolds.

13. On Rankin Fite, Esquire, Hamilton, Alabama, Attorney for appellant Pearce.

Robert S. Vance.

APPENDIX A.

In the
UNITED STATES DISTRICT COURT
For the Middle District of Alabama,
Northern Division.

Civil Action No. 1744-N.

M. O. Sims, Fred A. Beam, Wylie Johnson, G. R. Southard, Miles S. Lee, Paul Friedman, William Lindsay Williams, William P. Shaw, Jr., Prentice W. Thomas, Richard P. Tannehill, Paul M. Byrne, David R. Baker, Charles Morgan, Jr., and George Peach Taylor, for Themselves Jointly and Severally, and for all others similarly Situated,
Plaintiffs,

R. E. Farr, Marshall Meadows, Jack Hopping, Jack Ryan, Max W. Morgan, David J. Vann, Robert S. Vance, Richard P. Humphrey, Jr., John W. McConnell, Jr., Joseph N. Langan, William M. Williams, Jr., and Garet Van Antwerp,
Intervening Plaintiffs,

vs.

Bettye Frink, Secretary of State of the State of Alabama; Harrell Hammonds, Judge of Probate of Lowndes County, Alabama; John A. Sankey, Judge of Probate of Montgomery County, Alabama; J. Paul Meeks, Judge of Probate of Jefferson County, Alabama; John Grenier, Chairman of the Alabama State Republican Executive Committee; Perry O. Hooper, Secretary of the Alabama State Republican Executive Committee; Roy Mayhall, Chairman of the Alabama State Democratic Executive Committee; H. G. Rains, Secretary of the Alabama State Democratic Executive Committee; MacDonald Gallion, Attorney General of the State of Alabama,
Defendants.

Order Denying Motion for Rehearing and Modification.

Several of the intervening plaintiffs have filed on this date a "Motion for Rehearing and Modification of Proposed Decree." This motion seeks to have this Court modify its opinion of July 21, 1962, and the decree entered thereon of July 25, 1962, to the extent that said opinion and decree relate to the reapportionment and redistricting of the Senate of Alabama.

There are no new matters set out in the motion for rehearing and modification that were not presented to and thoroughly considered by this Court prior to issuing its opinion of July 21, 1962, and the decree issued thereon.

Upon consideration of the "Motion for Rehearing and Modification of Proposed Decree" and the several grounds thereof; it is, therefore, the Order, Judgment and Decree of this Court that said motion be and the same is hereby denied.

Done, this the 25th day of July, 1962.

/s/ Richard T. Rives,
United States Circuit Judge.

/s/ Daniel H. Thomas,
United States District Judge.

/s/ Frank M. Johnson, Jr.,
United States District Judge.

APPENDIX B.

Constitution of Alabama of 1901.

Section 198. The house of representatives shall consist of not more than one hundred and five members, unless new counties shall be created, in which event each new county shall be entitled to one representative. The members of the house of representatives shall be apportioned by the legislature among the several counties of the state, according to the number of inhabitants in them, respectively, as ascertained by the decennial census of the United States, which apportionment, when made, shall not be subject to alteration until the next session of the legislature after the next decennial census of the United States shall have been taken.

Section 199. It shall be the duty of the legislature at its first session after the taking of the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the number of representatives and apportion them among the several counties of the state, according to the number of inhabitants in them, respectively; provided, that each county shall be entitled to at least one representative.

Section 200. It shall be the duty of the legislature at its first session after taking the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the number of senators, and to divide the state into as many senatorial districts as there are senators, which districts shall be as nearly equal to each other in the number of inhabitants as may be, and each shall be entitled to one senator, and no more; and such districts, when formed,

shall not be changed until the next apportioning session of the legislature, after the next decennial census of the United States shall have been taken; provided, that counties created after the next preceding apportioning session of the legislature may be attached to senatorial districts. No county shall be divided between two districts, and no district shall be made up of two or more counties not contiguous to each other.

Section 284. . . . Representation in the legislature shall be based upon population, and such basis of representation shall not be changed by constitutional amendments.

APPENDIX C.

MOST NEARLY PERFECT REAPPORTIONMENT OF THE SENATE

DISTRICT	POPULATION	VARIATION
(Under-Represented)		
Madison *	117,348	+24,013
Tuscaloosa *	109,047	+15,712
Mobile #1 *	104,767	+11,435
Mobile #2	104,767	+11,435
Mobile #3	104,767	+11,435
Etowah	96,980	+ 3,645
Limestone Morgan	96,967	+ 3,632
Lee Russell *	96,105	+ 2,770
Calhoun *	95,878	+ 2,543
Dale, Henry Houston	97,070	+ 2,415
Jackson, DeKalb Cherokee	94,401	+ 1,066
Blount, Coosa St. Clair Shelby	93,695	+ 360
Marshall Cullman	93,590	+ 255
(Over-Represented)		
Randolph Chambers Tallapoosa	92,302	- 1,034
Crenshaw, Butler Conecuh Escambia	90,742	- 2,593
Jefferson #1 *	90,695	- 2,640
Jefferson #2	90,695	- 2,640
Jefferson #3	90,695	-2,640
Jefferson #4	90,695	-2,640
Jefferson #5	90,695	-2,640
Jefferson #6	90,695	-2,640
Jefferson #7	90,695	-2,640
Colbert, Marion Franklin *	90,331	-3,004
Macon, Pike Bullock Barbour	90,266	-3,099
Marengo, Clarke Choctaw, Wilcox	89,445	-3,890
Dallas, Perry Lowndes	89,422	-3,913
Lamar, Sumter Pickens, Hale Greene	89,331	-4,004
Chilton, Bibb Autauga Elmore	89,313	-4,022
Clay, Cleburne Talladega	88,806	-4,529
Coffee, Geneva Covington	88,524	-4,811
Baldwin, Monroe Washington	86,832	-6,503
Lauderdale Lawrence	86,123	-7,202
Winston, Walker Fayette	85,217	-8,118
Montgomery #1*	84,605	-8,125
Montgomery #2	84,605	-8,125

1/ Variation from perfect District of 93,335.

*Present District.

APPENDIX D.

PROPOSED TEMPORARY OR PROVISIONAL SENATE [1]

DISTRICT	POPULATION	VARIATION [2]
FIRST: * Lauderdale Limestone	98,135	+ 4,800
SECOND: * Lawrence Morgan	84,955	- 8,380
THIRD: * Blount, Cullman Winston	85,879	- 7,456
FOURTH: * Madison	117,348	+24,013
FIFTH: * Jackson Marshall	84,699	- 8,636
SIXTH: * Etowah St. Clair	122,368	+29,033
SEVENTH: * Calhoun	95,878	+ 2,543
EIGHTH: (Provisional) Talladega Clay, Coosa	88,621	- 4,714
NINTH: (Provisional) DeKalb, Cherokee Cleburne Randolph	88,108	- 5,227
TENTH: (Provisional) Chambers, Elmore Tallapoosa	103,359	+10,024
ELEVENTH: * Tuscaloosa	109,047	+15,712
TWELFTH: * Fayette, Lamar Walker	84,630	- 8,705
THIRTEENTH: * Jefferson #1	90,695	- 2,640
FOURTEENTH: Jefferson #2	90,695	- 2,640
FIFTEENTH: * Shelby, Chilton Autauga	76,564	-16,771
SIXTEENTH: (Provisional) Jefferson #3	90,695	- 2,640
SEVENTEENTH: * Butler, Conecuh Covington	77,953	-15,382
EIGHTEENTH: (Provisional) Jefferson #4	90,695	- 2,640
NINETEENTH: (Provisional) Jefferson #5	90,695	- 2,640
TWENTIETH: (Provisional) Jefferson #6	90,695	- 2,640
TWENTY-FIRST: * Baldwin, Monroe Escambia	104,971	+11,636
TWENTY-SECOND: (Provisional) Jefferson #7	90,695	- 2,640
TWENTY-THIRD: (Provisional) Perry, Bibb, Dallas	88,382	- 4,953
TWENTY-FOURTH: (Provisional) Pickens, Hale, Greene, Sumter, Choctaw	92,930	- 405
TWENTY-FIFTH: (Provisional) Marengo, Wilcox Washington, Clarke	86,947	- 6,388
TWENTY-SIXTH: (Provisional) Lowndes, Pike, Crenshaw, Coffee	86,896	- 6,439
TWENTY-SEVENTH: * Lee Russell	96,105	+ 2,770
TWENTY-EIGHTH: * Montgomery #1	84,605	- 8,730
TWENTY-NINTH: (Provisional) Montgomery #2	84,605	- 8,730
THIRTIETH: (Provisional) Geneva, Henry Houston	88,314	- 5,021
THIRTY-FIRST: * Colbert, Marion Franklin	90,331	- 3,004
THIRTY-SECOND: (Provisional) Macon, Dale Bullock, Barbour	95,945	+ 2,610
THIRTY-THIRD: * Mobile #1	104,767	+11,432
THIRTY-FOURTH: (Provisional) Mobile #2	104,767	+11,432
THIRTY-FIFTH: (Provisional) Mobile #3	104,767	+11,432

* - Present Senate Districts.

1/ Retain 17 Districts; Form 18 Provisional Districts: 9 Multi-County and 9 Coextensive in now egregiously under-represented counties.

2/ Variation from Perfect District of 93,335.

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IN THE

SUPREME COURT OF THE UNITED STATES.

1963

M. O. SIMS, FRED A. BEAM, WYLIE JOHNSON, G. R. SOUTHARD, MILES S. LEE, PAUL FRIEDMAN, WILLIAM LINDSAY WILLIAMS, WILLIAM P. SHAW, JR., PRENTICE W. THOMAS, RICHARD D. TANNEHILL, PAUL M. BYRNE, DAVID R. BAKER, CHARLES MORGAN, JR., and GEORGE PEACH TAYLOR, for Themselves Jointly and Severally, and for All Others Similarly Situated, Plaintiffs-Appellees,

R. E. FARR, MARSHALL MEADOWS, JACK HOPPING, JACK RYAN, MAX W. MORGAN, Intervenors-Appellees,

DAVID J. YANN, ROBERT S. VANCE, RICHARD P. HUMPHREY, JR., Intervenors-Appellants,

JOHN W. McCONNELL, JR., JOSEPH M. LANGAN, WILLIAM M. WILLIAMS, JR., and GARET VAN ANTWERP, Intervenors-Appellants,

vs.

BETTYE FRINK, Secretary of State of the State of Alabama; HARRELL HAMMONDS, Judge of Probate of Lowndes County, Alabama; JOHN A. SANKEY, Judge of Probate of Montgomery County, Alabama; J. PAUL MEEKS, Judge of Probate of Jefferson County, Alabama; JOHN GRENIER, Chairman of the Alabama State Republican Executive Committee; PERRY O. HOOPER, Secretary of the Alabama State Republican Executive Committee; H. G. RAINS, Secretary of the Alabama State Democratic Executive Committee; MacDONALD GALLION, Attorney General of the State of Alabama; and B. A. REYNOLDS, Judge of Probate of Dallas County, Alabama, and FRANK PEARCE, Judge of Probate of Marion County, Alabama, Defendants.

Appeal From the United States District Court for the Middle District of Alabama, Northern Division.

Civil Action, No. 1744-N.

MOTION TO DISMISS OR AFFIRM.

CHARLES MORGAN, JR.,
1512 Comer Building,
Birmingham, Alabama,
GEORGE PEACH TAYLOR,
927 Brown-Marx Building,
Birmingham 2, Alabama,
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1025 Bank for Savings Building,
Birmingham, Alabama.

ST. LOUIS LAW PRINTING CO., INC., 415 N. Eighth Street. CEntral 1-4477.

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IN THE

SUPREME COURT OF THE UNITED STATES.

M. O. SIMS, FRED A. BEAM, WYLIE JOHNSON, G. R. SOUTHARD, MILES S. LEE, PAUL FRIEDMAN, WILLIAM LINDSAY WILLIAMS, WILLIAM P. SHAW, JR., PRENTICE W. THOMAS, RICHARD D. TANNEHILL, PAUL M. BYRNE, DAVID R. BAKER, CHARLES MORGAN, JR., and GEORGE PEACH TAYLOR, for Themselves Jointly and Severally, and for All Others Similarly Situated, Plaintiffs-Appellees,

R. E. FARR, MARSHALL MEADOWS, JACK HOPPING, JACK RYAN, MAX W. MORGAN, Intervenors-Appellees,

DAVID J. VANN, ROBERT S. VANCE, RICHARD P. HUMPHREY, JR., Intervenors-Appellants,

JOHN W. McCONNELL, JR., JOSEPH M. LANGAN, WILLIAM M. WILLIAMS, JR., and GARET VAN ANTWERP, Intervenors-Appellants,

vs.

BETTYE FRINK, Secretary of State of the State of Alabama; HARRELL HAMMONDS, Judge of Probate of Lowndes County, Alabama; JOHN A. SANKEY, Judge of Probate of Montgomery County, Alabama; J. PAUL MEEKS, Judge of Probate of Jefferson County, Alabama; JOHN GRENIER, Chairman of the Alabama State Republican Executive Committee; PERRY O. HOOPER, Secretary of the Alabama State Republican Executive Committee; H. G. RAINS, Secretary of the Alabama State Democratic Executive Committee; MacDONALD GALLION, Attorney General of the State of Alabama; and B. A. REYNOLDS, Judge of Probate of Dallas County, Alabama, and FRANK PEARCE, Judge of Probate of Marion County, Alabama, Defendants.

Appeal From the United States District Court for the Middle District of Alabama, Northern Division.

Civil Action. No. 1744-N.

MOTION TO DISMISS OR AFFIRM.

Plaintiffs-Appellees, M. O. Sims et al., and Intervenors-Appellees, R. E. Farr et al. (all hereinafter called "plaintiffs") pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move that the Final Judgment and Decree of the District Court be affirmed or that the several appeals be dismissed on the ground that the questions presented are so unsubstantial as not to warrant further argument.

ARGUMENT.

The Plaintiffs, as citizens of the United States and of the State of Alabama, and as taxpayers and duly qualified and registered voters in said State, sued in their own behalf and in behalf of all other voters of the State of Alabama who are similarly situated. The complaint sought a determination of plaintiffs' rights with respect to the apportionment of State representatives and senators among the counties of the State of Alabama.

Plaintiffs alleged that debasement of their votes in Alabama constituted a denial of the constitutionally guaranteed equal protection of the law. The Legislature of the State of Alabama had failed and continued to fail to reapportion itself since establishment of the Alabama Constitution of 1901, thereby violating both the Fourteenth Amendment and § 198, § 199 and § 200 of the Alabama Constitution of 1901.[1]

The Three Judge District Court, Rives, Circuit Judge; Thomas and Johnson, District Judges, on April 14, 1962, denied an application by the plaintiffs for interlocutory relief. The Court at that time expressed the view that sufficient time remained for the Legislature of Alabama to comply with its duty prescribed by the Constitution of 1901 of the State of Alabama.

On July 12, 1962, an extraordinary session of the Alabama Legislature passed a proposed Constitutional Amendment, commonly referred to as a "67 Senator Amendment,"[2] subject to the ratification of the voters of the State of Alabama in an election to be held in November, 1962. On the same day, the Governor of the State of

---

[1] Appendix "A" of the Opinion of the District Court, 208 F. Supp. 431 (1962).

[2] Senate Bill 29. See Appendix "B" of the Opinion of the District Court, *Id.*, 1.

Alabama signed into law the "Crawford-Webb Bill."[3] This Bill has been characterized as a "standby" legislative act, to take effect in the event the voters of the State of Alabama did not ratify the proposed "67 Senator Amendment," or the District Court did not approve the "67 Senator Amendment."

Upon considering the action taken by the Legislature of Alabama during the grace period, the District Court in its final decree determined: "That neither the '67 Senator Amendment' nor the 'Crawford-Webb Act' meets the necessary constitutional requirements." **Sims v. Frink**, 208 F. Supp. 431, 437 (1962). Therefore, the District Court found it necessary to indicate some immediately workable plan for the reapportionment of the Legislative seats of the Legislature of Alabama.

Under the requirements of § 198, § 199 and § 200 of the Constitution of Alabama[4] neither the membership of the House nor the Senate can be based strictly and entirely upon population. § 284 of that Constitution states that "representation in the Legislature shall be based upon population, and such basis of representation shall not be changed by constitutional amendments." But there exist conflicting requirements in § 197 and § 200. As a result "representation according to population **to some extent** must be required in **both** Houses if invidious discrimination in the Legislative systems as a whole is to be avoided". (emphasis added). 208 F. Supp. 431, 439 (1962).

The District Court, accordingly, undertook to determine how far the overriding requirement of the Federal Constitution can be met, without total disregard of the more detailed requirements of the Alabama Constitution. The judgment below, represents an earnest effort "to meet all such requirements . . ."

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[3] Officially known as House Bill 59, see Appendix "C" of the Opinion of the District Court. *Id.*, 1.

[4] See Appendix "A" of the Opinion of the District Court. *Id.* 1.

That judgment adopted the provisions of the proposed "67-Senator Amendment" relating to the House of Representatives.[5] While the proposed reapportionment of the Senate in the "Crawford-Webb Act" was "unacceptable as a piece of **permanent** legislation" (emphasis added), the alternatives were altogether unacceptable. Strict reapportionment of the Senate would result in placing nine counties having over half the population of the State in complete control of the Senate. As the Court observed, "if the provisions of the State Constitution do not permit a single county to be divided into more than one senatorial district, such restriction would have to be held in conflict with the overriding requirement of equal protection of the laws provided by the Federal Constitution. We are not yet convinced of such a conflict beyond a reasonable doubt." After the Court's adoption of the above plan for the reapportionment of both Houses of the Legislature, several parties have indicated their dissatisfaction with the decree of the District Court by filing appeals with this Honorable Court. The Intervenor-Appellees respectfully request that the Court consider this motion as addressed to all such appeals.

The District Court emphasized that its purpose was not to reapportion permanently the Legislature of the State of Alabama, but rather to release the "strangle hold on the Legislature". With wise restraint, the Court felt that it should "so far as is possible, accept such parts of the Acts of the Legislature as have any merit in framing the order of the Court."

The Legislature of the State of Alabama has made a step in the right direction, the first such step in sixty-odd years. The District Court recognized that the newly apportioned Legislature will be free to improve upon the changes resulting from the order of the Court. Thus, the path has been cleared, the strangle hold released.

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[5] See Appendix "B" of the Opinion of the District Court.

On the remandment of **Baker v. Carr**, 82 S. Ct. 691 (1962), the District Court observed that

> [7-9] [i]n considering the remedy which should be applied to correct the inequalities and inequities which we find to exist in the 1962 reapportionment of legislative strength in Tennessee, we begin with the view that there should be a minimum of judicial intrusion by federal courts into the governmental affairs of the state consistent with an effective enforcement of the plaintiffs' rights to equal protection of the law under the Fourteenth Amendment to the Federal Constitution as envisaged by the landmark opinion of the Supreme Court in the present case. Federal courts should be ever conscious of the necessity of preserving the integrity and independence of state governments, and should exercise an appropriate degree of restraint to permit them the widest possible latitude in conducting their internal affairs and in solving their own governmental problems. 206 F. Supp. 341 (1962).

Wherefore, Petitioners respectfully move that the several appeals be dismissed or that the judgment and decree of the District Court be affirmed.

Respectfully submitted,

CHARLES MORGAN, JR.

.....

GEORGE PEACH TAYLOR,

.....

JEROME A. COOPER,

.....

Certificate of Service.

I, Jerome A. Cooper, one of the attorneys for Intervenors-Appellees, R. E. Farr et al., as a member of the Bar of

the Supreme Court of the United States, hereby certify that on the ..... day of November 1962, I served copies of the foregoing statements opposing jurisdiction and motion to dismiss or affirm on the several Appellants thereto by mailing copies in duly addressed envelopes, with first class postage prepaid, to their respective attorneys of record as follows:

Thomas G. Gayle,
1104½ Water Avenue,
Selma, Alabama,

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Selma, Alabama,

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Birmingham, Alabama.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. [redacted] 41

JOHN W. McCONNELL, JR., JOSEPH N. LANGAN, WILLIAM M. WILLIAMS, JR., and GARET VAN ANTWERP, Appellants,

versus

BETTYE FRINK, Secretary of State of the State of Alabama; HARRELL HAMMONDS, Judge of Probate of Lowndes County, Alabama, JOHN A. SANKEY, Judge of Probate of Montgomery County, Alabama; J. PAUL MEEKS, Judge of Probate of Jefferson County, Alabama; JOHN GRENIER, Chairman of the Alabama State Republican Executive Committee; PERRY O. HOOPER, Secretary of the Alabama State Republican Executive Committee; H. G. RAINS, Secretary of the Alabama State Democratic Executive Committee; MacDONALD GALLION, Attorney General of the State of Alabama, Appellees.

On Appeal from the United States District Court for the Middle District of Alabama, Northern Division.

JURISDICTIONAL STATEMENT OF APPELLANTS

JOHN W. McCONNELL, JR.,
1101 Merchants National
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Mobile, Alabama,
Attorney for Appellants.

HAUSER PRINTING CO., INC., NEW ORLEANS

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. . . . . .

JOHN W. McCONNELL, JR., JOSEPH N. LANGAN, WILLIAM M. WILLIAMS, JR., and GARET VAN ANTWERP, Appellants,

versus

BETTYE FRINK, Secretary of State of the State of Alabama; HARRELL HAMMONDS, Judge of Probate of Lowndes County, Alabama, JOHN A. SANKEY, Judge of Probate of Montgomery County, Alabama; J. PAUL MEEKS, Judge of Probate of Jefferson County, Alabama; JOHN GRENIER, Chairman of the Alabama State Republican Executive Committee; PERRY O. HOOPER, Secretary of the Alabama State Republican Executive Committee; H. G. RAINS, Secretary of the Alabama State Democratic Executive Committee; MacDONALD GALLION, Attorney General of the State of Alabama, Appellees.

On Appeal from the United States District Court for the Middle District of Alabama, Northern Division.

JURISDICTIONAL STATEMENT OF APPELLANTS

Appellants appeal from the Judgment of the three-Judge United States District Court for the Middle District of Alabama, entered on July 25, 1962, adjuging and de-

creeing certain statutes of the State of Alabama, relating to the reapportionment of the Legislature of Alabama to be unconstitutional and void, and reapportioning the Legislature of Alabama, and ordering and enjoining certain named parties to take certain action, and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the Appeal and that a substantial question is presented.

OPINION BELOW

The Opinion of the District Court (_____ F. Supp. _____) is not yet reported, but it and the Court's decree appear as Appendix No. 1 to the separate Jurisdictional Statement of Appellants in O.T. No. 501, *Reynolds, et al, v. Sims, et al*, which was filed in this Court on October 12, 1962.

JURISDICTION

The proceeding below was instituted by the original Plaintiffs below on their own behalf and on behalf of all persons similarly situated and in which they sought a declaratory judgment pursuant to Title 28, U.S.C., §§ 2201 and 2202, as well as injunctive relief. The Complaint asked for a declaration of Plaintiffs' rights concerning the apportionment of the Legislature of Alabama and other relief necessary to insure to them equal protection of the laws theretofore denied to them and guaranteed to them under the Fourteenth Amendment to the Constitution of the United States. Jurisdiction was founded on the above sections of the United States Code and on Title 42, U.S.C., §§ 1983 and 1988 and on Title 28, U.S.C., § 1343(3). Cross-Appellants and others intervened, asking more specific relief, and were, by order of Court, added as additional parties to the proceeding.

All parties plaintiff are citizens, taxpayers, residents and voters of the State of Alabama. Defendants are certain public and political party officials who control and operate the election processes by which the members of the Alabama Legislature are selected under Alabama law.

The case was heard and determined by a panel of three judges convened under Title 28, U.S.C., §§ 2281 and 2284, and the decree from which the Cross-Appeal was taken was entered on July 25, 1962, following the opinion of the Court filed on July 21, 1962. A preliminary opinion of that Court entered on April 14, 1962, is reported at 205 F. Supp. 245.

Notice of appeal from said decree was filed in O.T., 1962, No. 501, *Reynolds, et al, v. Sims, et al, supra*, on August 17, 1962. These Cross-Appellants thereafter filed their separate Notice of Appeal in the United States District Court for the Middle District of Alabama, on September 22, 1962, within 60 days of the final order or decree from which the Cross-Appeal is taken, under the provisions of Title 28, U.S.C., § 2101(b).

Jurisdiction of this appeal is conferred on this Court by Title 28, U.S.C., § 1253, and is sustained by the cases of *Baker v. Carr*, 369 U.S. 186, *Scholle v. Hare*, 369 U.S. 429; and *W.M.C.A., Inc., et al v. Simon*, ... U.S. ..... (8 L. Ed. 2d 430, June 11, 1962).

QUESTION PRESENTED

The sole question raised by the Cross-Appellants in this Cross-Appeal and which they maintain should be answered by this Court in the affirmative, is:

Were these Cross-Appellants entitled to a decree in the Court below, based on the proposition that the Equal

Protection Clause of the Fourteenth Amendment to the United States Constitution requires that each person of a state have equal representation, based on a reasonable or rational population basis, in both houses of a legislature, where the legislative power of the state is vested in a two-house legislature?

STATUTES INVOLVED

Involved in this Cross-Appeal are §§ 39, 44, 50, 197, 198, 199, 200, 202, 203 and 284 of the Constitution of Alabama of 1901; and Acts No. 91 and 93, 1962 Special Session of the Legislature of Alabama. These Statutes and Constitutional provisions, except for §§ 39 and 50, are set out on pp. 5 through 14 to the separate Jurisdictional Statement of Appellants Reynolds, et al, filed in this Court on October 12, 1962, and §§ 39 and 50 appear as Appendix A to this Statement.

STATEMENT

These Cross-Appellants adopt, by reference herein, the "Statement of the Case" appearing in the separate Jurisdictional Statement of Appellants David J. Vann, et al, heretofore filed in this Court. In addition thereto, these Cross-Appellants wish to add the following:

The Constitution of Alabama of 1901 states flatly and unequivocably that (§ 284) "Representation in the legislature shall be based upon population". § 44 of the same Constitution provides that "The legislative power of this state shall be vested in a legislature, which shall consist of a senate and a house of representatives." The Fourteenth Amendment to the Constitution of the United States provides in part that "No state shall * * * deny to any person within its jurisdiction the equal protection of the laws." It is the contention of these Cross-Appellants

that, under the framework and provisions of the present Alabama Constitution and operating within the prohibition of the above quoted provision of the Fourteenth Amendment to the Constitution of the United States, a person within the jurisdiction of the State of Alabama can only be granted equal protection of its laws by having equal representation in **both** houses of the Alabama Legislature, i.e., representation that is based on a reasonable or rational, not necessarily mathematically equal, population basis.

Plaintiffs in the Complaint filed in the District Court asked for a declaratory judgment and specifically requested that the Court, in its judgment, order (1) that **both** houses of the Legislature of the State of Alabama must be apportioned in accordance with population and (2) that certain provisions of the Constitution of Alabama (specifically, the proviso in § 199 and the last sentence in § 200), to the extent that they cannot be followed in apportioning the two houses of the Alabama Legislature on the basis of population, are repugnant with § 284 of the Alabama Constitution and with the Fourteenth Amendment to the Constitution of the United States. The District Court was asked to declare on these two questions and either (a) to apportion the Legislature of Alabama in accordance therewith or (b) to establish this as a guide for the Legislature of Alabama in the future apportionment of itself. The District Court did not so rule in either regard.

THE QUESTION IS SUBSTANTIAL

This Cross-Appeal squarely tenders the most important unresolved question involved in pending reapportionment litigation:

Does not the Equal Protection Clause of the Four-

teenth Amendment to the United States Constitution require that each person residing in a state have equal representation based on a reasonable or rational population basis in **both** houses of a legislature, where the legislative power of the state is vested in both houses?

This question has been pointed up, but not resolved, in the opinions rendered in the three reapportionment cases decided by this Court within the past year. Other courts have also raised this question and in some instances, have decided that the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution is satisfied if only one house of a two-house Legislature is apportioned according to population. See the *Maryland Committee for Fair Representation, at al, v. Tawes, Governor,* ..... Md. ....., 182 A. 2d 877 (June 28, 1962). Although not decided, the question was also raised in *Toombs v. Fortson,* 205 F. Supp. (N.D. Ga., May 25, 1962). This question is also presented to this Court by the appeal in *Scholle v. Hare, supra.*

That this question is of paramount importance in the apportionment of the Legislature of Alabama can be seen in the various provisions of the Constitution of Alabama with regard to the size and composition of the two houses of its Legislature. The size of each house of that Legislature has certain constitutional limitations. The House of Representatives has a constitutional limitation (§ 198) on the maximum number (106). Both the maximum and the minimum number of members in the Senate, which in turn is tied to the number of members in the House of Representatives, is fixed (§ 197). Another Constitutional provision provides that each county shall be entitled to at least one representative (§ 199), which in effect fixes the minimum number of members in the House of Representatives (67 at this time). The size of the

House of Representatives between 67 and 106 is determined by the Legislature (§ 199). Thus, it could fix the number at 67 members, in which case, each county, regardless of population, would be entitled to one, and only one, representative, and in which case the number in the Senate could vary from 17 members (¼ of 67) to 22 members (⅓ of 67). However, again, unless those 17 to 22 members were apportioned in accordance with population, which could only be accomplished if certain more populous counties were to be divided into more than one senatorial district, neither house of the Legislature would be based on population. However, even if the number of members in the House of Representatives should be fixed at the maximum (106) and the number in the Senate at the minimum (27, ¼ of 106), there would still be inequality in representation in the Senate unless the more populous counties were again to be divided into more than one senatorial district.

It is recognized by Cross-Appellants that mathematical exactitude in the equality of representation in a legislature is not required by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. However, it is earnestly contended that that provision of the United States Constitution can only be satisfied by a person within the jurisdiction of a state having equality of representation in the entire legislative process, which, in the case of Alabama, means both houses of its legislature, as nearly as practical, considering the distribution of population among the political subdivisions of the State.

In this connection, Cross-Appellants wish to emphasize that the question presented is not affected by whether or not an under-represented area is urban or rural in characteristic or by the composition of the political sub-

divisions involved. The question concerns solely the right of a person within the jurisdiction of a state, regardless of the area in which he resides, to equal representation in its legislative process, and therefore, to equal protection of its laws.

This Cross-Appeal was taken solely by reason of the failure of the District Court in its Decree either to apportion both houses of the Alabama Legislature on the basis of population, or to declare, as a guide to the Legislature of the State of Alabama in apportioning itself, that the Equal Protection Clause requires that both houses of that Legislature be apportioned on the basis of population. This question must be resolved before there can be a rational and constitutional apportionment of the Legislature of Alabama.

CONCLUSION

Cross-Appellants respectfully submit that jurisdiction should be noted in this appeal and the case placed on the argument calendar for full consideration by this Court.

JOHN W. McCONNELL, JR.,
1101 Merchants National
Bank Building,
Mobile, Alabama,

PROOF OF SERVICE

I, JOHN W. McCONNELL, JR., an Appellant herein, hereby certify that on the _____ day of November, 1962, I served copies of the foregoing Jurisdictional Statement on each of the parties to this suit, by mailing a

copy by U. S. Mail, postage prepaid, to their respective attorneys of record, or if none, to them, personally at the addresses hereinafter indicated:

1. On Hon. MacDonald Gallion, Attorney General of Alabama, Montgomery, Alabama, Attorney of record for himself and for Hon. Bettye Frink.
2. On Boswell and Smith, Geneva, Alabama, Attorneys of Record for Judge Harrell Hammonds
3. On Judge John A. Sankey, Court House, Montgomery, Alabama.
4. On Judge J. Paul Meeks, Court House, Birmingham, Alabama.
5. On Hon. John Grenier, Comer Building, Birmingham, Alabama.
6. On Hon. Perry O. Hooper, Washington Building, Montgomery, Alabama.
7. On Roy D. McCord, Esquire, Gadsden, Alabama, Attorney for Hon. H. G. Rains.
8. On Hon. Roy Mayhall, Court House, Jasper, Alabama.
9. On Charles Morgan, Jr., Esquire, Bank for Savings Building, Birmingham, Alabama, Attorney for original plaintiffs.
10. On Cooper, Mitch & Crawford, Bank for Savings Building, Birmingham, Alabama, Attorneys for intervening plaintiffs Farr et al.
11. On Thomas G. Gayle, Esquire, 1104½ Water Avenue, Selma, Alabama, Attorney for appellant Reynolds.
12. On Rankin Fite, Esquire, Hamilton, Alabama, Attorney for appellant Pearce.
13. On David J. Vann, Esquire, Comer Building,

Birmingham, Alabama, Attorney of Record for intervening plaintiffs David J. Vann, et al.

JOHN W. McCONNELL, JR.

APPENDIX A

Constitution of Alabama of 1901

§ 39. The legislature may, by a vote of two-thirds of each house thereof, arrange and designate boundaries for the several counties of this state, which boundaries shall not be altered, except by a like vote; but no new county shall be formed hereafter of less extent than six hundred square miles, and no existing county shall be reduced to less than six hundred square miles; and no new county shall be formed unless it shall contain a sufficient number of inhabitants to entitle it to one representative under the ratio of representation existing at the time of its formation, and leave the county or counties from which it is taken with the required number of inhabitants to entitle such county or counties, each, to separate representation; * * *.

§ 50. The legislature shall consist of not more than thirty-five senators and not more than one hundred and five members of the house of representatives, to be apportioned among the several districts and counties, as prescribed in this Constitution; provided that in addition to the above number of representatives, each new county hereafter created shall be entitled to one representative.

No. 23

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IN THE 1963

SUPREME COURT OF THE UNITED STATES.

M. O. SIMS, FRED A. BEAM, WYLIE JOHNSON, G. R. SOUTHARD, MILES S. LEE, PAUL FRIEDMAN, WILLIAM LINDSAY WILLIAMS, WILLIAM P. SHAW, JR., PRENTICE W. THOMAS, RICHARD D. TANNEHILL, PAUL M. BYRNE, DAVID R. BAKER, CHARLES MORGAN, JR., and GEORGE PEACH TAYLOR, for Themselves Jointly and Severally, and for All Others Similarly Situated, Plaintiffs-Appellees,

R. E. FARR, MARSHALL MEADOWS, JACK HOPPING, JACK RYAN, MAX W. MORGAN, Intervenors-Appellees,

DAVID J. VANN, ROBERT S. VANCE, RICHARD P. HUMPHREY, JR., Intervenors-Appellants,

JOHN W. McCONNELL, JR., JOSEPH M. LANGAN, WILLIAM M. WILLIAMS, JR., and GARET VAN ANTWERP, Intervenors-Appellants,

vs.

BETTYE FRINK, Secretary of State of the State of Alabama; HARRELL HAMMONDS, Judge of Probate of Lowndes County, Alabama; JOHN A. SANKEY, Judge of Probate of Montgomery County, Alabama; J. PAUL MEEKS, Judge of Probate of Jefferson County, Alabama; JOHN GRENIER, Chairman of the Alabama State Republican Executive Committee; PERRY O. HOOPER, Secretary of the Alabama State Republican Executive Committee; H. G. RAINS, Secretary of the Alabama State Democratic Executive Committee; MacDONALD GALLION, Attorney General of the State of Alabama; and B. A. REYNOLDS, Judge of Probate of Dallas County, Alabama, and FRANK PEARCE, Judge of Probate of Marion County, Alabama, Defendants.

Appeal From the United States District Court for the Middle District of Alabama, Northern Division.

Civil Action. No. 1744-N.

AMENDMENT TO MOTION TO DISMISS OR AFFIRM.

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927 Brown-Marx Building,
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JEROME A. COOPER,
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Birmingham, Alabama.

ST. LOUIS LAW PRINTING CO., INC., 415 N. Eighth Street., CEntral 1-4477.

IN THE

SUPREME COURT OF THE UNITED STATES.

M. O. SIMS, FRED A. BEAM, WYLIE JOHNSON, G. R. SOUTHARD, MILES S. LEE, PAUL FRIEDMAN, WILLIAM LINDSAY WILLIAMS, WILLIAM P. SHAW, JR., PRENTICE W. THOMAS, RICHARD D. TANNEHILL, PAUL M. BYRNE, DAVID R. BAKER, CHARLES MORGAN, JR., and GEORGE PEACH TAYLOR, for Themselves Jointly and Severally, and for All Others Similarly Situated, Plaintiffs-Appellees,

R. E. FARR, MARSHALL MEADOWS, JACK HOPPING, JACK RYAN, MAX W. MORGAN, Intervenors-Appellees,

DAVID J. VANN, ROBERT S. VANCE, RICHARD P. HUMPHREY, JR., Intervenors-Appellants,

JOHN W. McCONNELL, JR., JOSEPH M. LANGAN, WILLIAM M. WILLIAMS, JR., and GARET VAN ANTWERP, Intervenors-Appellants,

vs.

BETTYE FRINK, Secretary of State of the State of Alabama; HARRELL HAMMONDS, Judge of Probate of Lowndes County, Alabama; JOHN A. SANKEY, Judge of Probate of Montgomery County, Alabama; J. PAUL MEEKS, Judge of Probate of Jefferson County, Alabama; JOHN GRENIER, Chairman of the Alabama State Republican Executive Committee; PERRY O. HOOPER, Secretary of the Alabama State Republican Executive Committee; H. G. RAINS, Secretary of the Alabama State Democratic Executive Committee; MacDONALD GALLION, Attorney General of the State of Alabama; and B. A. REYNOLDS, Judge of Probate of Dallas County, Alabama, and FRANK PEARCE, Judge of Probate of Marion County, Alabama, Defendants.

Appeal From the United States District Court for the Middle District of Alabama, Northern Division.

Civil Action. No. 1744-N.

AMENDMENT TO MOTION TO DISMISS OR AFFIRM.

Plaintiffs-Appellees, M. O. Sims et al., and Intervenors-Appellees, R. E. Farr et al. (all hereinafter called "plaintiffs") respectfully amend their motion to dismiss or affirm and argument in support thereof as hereinafter indicated.

Plaintiffs amend the Motion so as to read as follows:

Pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, Plaintiffs move that the Judgment and Decree of the District Court be affirmed or that the several appeals be dismissed on the following grounds:

(1) As to all appeals, the questions presented are so unsubstantial as not to warrant further argument;

(2) As to the appeal of Intervenors-Appellants John W. McConnell, Jr., et al., the appeal is not within the jurisdiction of this Court, not having been taken in time as provided in Title 28, U. S. C., Sec. 2101 (b);

(3) As to the appeal of Intervenors-Appellants David J. Vann and Robert S. Vance, the appeal is not within the jurisdiction of this Court, the Jurisdictional Statement of these Intervenors-Appellants not conforming to Rule 15 (g) of the Revised Rules of the Supreme Court of the United States in that it does not contain a statement showing the matters in which it is contended that the District Court abused its discretion.

ARGUMENT.

Plaintiffs respectfully would add to the Argument contained in the original Motion matters in support of the second and third grounds of the amended Motion.

The judgment and decree appealed from is interlocutory and not final. Submission was made on Plaintiffs' motion for interlocutory injunction. The Court concluded its opinion of July 21, 1962, with these words:

> "It is this Court's further intention to retain jurisdiction of this case and defer any hearing on plaintiffs' motion for a final injunction until the Legislature, as provisionally reapportioned by this order, has an opportunity to provide for a true reapportionment of both House of the Alabama Legislature. The Court hopes that the moderate steps taken by this order may be enough to break the strangle hold. They certainly will not suffice as any permanent reapportionment. If they should prove insufficient to break the strangle hold, the Court remains under the solemn duty to relieve the plaintiffs and other citizens like situated from further denial of the equal protection of the laws. That much must be accomplished before there can be a final disposition of this case."

The Decree of July 25, 1962, entered pursuant to its opinion of July 21, also shows that the judgment is interlocutory, not final.

The judgment being interlocutory, the time for appeal was 30 days, not 60 days. Title 28, U. S. C., Section 210(b). Intervenors-Appellants McConnell et al., did not file their Notice of Appeal (Cross Appeal) until September 22, 1962, more than 30 days after the entry of the decree of the District Court. In fact, the Notice of Appeal has not been accepted by the Clerk of the District, as shown by his letter of September 24, 1962, to Mr. McCon-

nell, a copy of which was addressed to the Clerk of the Supreme Court of the United States.

Intervenors-Appellants Vann and Vance did not include in their jurisdictional statement any showing of the matters in which they contended that the District Court had abused its discretion by the action taken, as required by Rule 15 (9) of the Revised Rules of the Supreme Court of the United States. We argued in the original Motion and Argument that the District Court exercised restraint, giving the Legislature of the State of Alabama further opportunity to properly apportion itself. Nowhere in the Jurisdictional Statement of Intervenors-Appellants Vann and Vance is there any statement or argument showing abuse of this judicial decision of restraint.

Plaintiffs have indicated their approval of the District Court's interlocutory judgment and have argued its wisdom. But without complying with Rule 15 (9), Intervenors-Appellants Vann and Vance cannot raise their questions for decision by this Court.

Respectfully submitted,

.....
CHARLES MORGAN, JR.,

.....
GEORGE PEACH TAYLOR,

.....
JEROME A. COOPER.

Certificate of Service.

I, George Peach Taylor, one of the attorneys for Intervenors-Appellees, M. O. Sims et al., as a member of the

bar of the Supreme Court of the United States, hereby certify that on the .... day of November, 1962, I served copies of the foregoing statement amending plaintiffs' motion to dismiss or affirm on the several Appellants thereto by mailing copies in duly addressed envelopes, with first-class postage pre-paid, to their respective attorneys of records as follows:

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Selma, Alabama,

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C. H. Erskine Smith,
First National Building,
Birmingham, Alabama.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1962

No. ~~230~~ 27

DAVID J. VANN and ROBERT S. VANCE, Appellants,

versus

BETTYE FRINK, Secretary of State of the State of Alabama; HARRELL HAMMONDS, Judge of Probate of Lowndes County, Alabama; JOHN A. SANKEY, Judge of Probate of Montgomery County, Alabama; J. PAUL MEEKS, Judge of Probate of Jefferson County, Alabama; JOHN GRENIER, Chairman of the Alabama State Republican Executive Committee; PERRY O. HOOPER, Secretary of the Alabama State Republican Executive Committee; H. G. RAINS, Secretary of the Alabama State Democratic Executive Committee; MacDONALD GALLION, Attorney General of the State of Alabama; ROY MAYHALL, Chairman of the Alabama State Democratic Executive Committee, Appellees.

On Appeal from the United States District Court for the Middle District of Alabama, Northern Division.

BRIEF

Opposing Amended Motion to Dismiss or Affirm.

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C. H. ERSKINE SMITH,
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ST. LOUIS LAW PRINTING CO., INC., 415 N. Eighth Street. CEntral 1-4477.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1962.

No. 540.

DAVID J. VANN and ROBERT S. VANCE, Appellants,

versus

BETTYE FRINK, Secretary of State of the State of Alabama; HARRELL HAMMONDS, Judge of Probate of Lowndes County, Alabama; JOHN A. SANKEY, Judge of Probate of Montgomery County, Alabama; J. PAUL MEEKS, Judge of Probate of Jefferson County, Alabama; JOHN GRENIER, Chairman of the Alabama State Republican Executive Committee; PERRY O. HOOPER, Secretary of the Alabama State Republican Executive Committee; H. G. RAINS, Secretary of the Alabama State Democratic Executive Committee; MacDONALD GALLION, Attorney General of the State of Alabama; ROY MAYHALL, Chairman of the Alabama State Democratic Executive Committee, Appellees.

On Appeal from the United States District Court for the Middle District of Alabama, Northern Division.

BRIEF

Opposing Amended Motion to Dismiss or Affirm.

These appellants are unable to ascertain from the caption of the Amendment by Sims et al. to their Motion to Dismiss or Affirm whether the same was filed in this appeal or whether the movants are properly before the Court as parties in this appeal. The following argument opposing said amended motion is submitted for consideration only in the event that such questions are due to be answered in the affirmative.

ARGUMENT.

As to this particular appeal, the sole ground for dismissal or affirmation advanced in the Amendment to the Motion to Dismiss or Affirm is the alleged non-compliance by these appellants with Rule 15 (g) of the Revised Rules of the Supreme Court. Such ground necessarily rests on the contention that the decree from which this appeal was taken was only an interlocutory injunction. It was with finality, however, that the District Court rendered its declaratory judgment holding the previous apportionment of the Legislature of Alabama, a newly enacted reapportionment act and a proposed amendment to the Alabama Constitution of 1901, all to be violative of the Fourteenth Amendment. By injunction, it placed into effect its plan of reapportionment under which the State of Alabama will be governed for some indefinite future time. The District Court's retention of jurisdiction does not detract from the finality of those actions. It is a fairly common practice in equity to reserve certain matters for future adjustment and relief while making a final decree. It is also true that a final decree is not necessarily the ultimate decision which completely terminates a proceeding. (See e. g., 13 **Cyclopedia of Federal Procedure**, 3rd Edition, §57.20, page 126; **Cohen v. Beneficial Industrial Loan Corp.**, 337 U. S. 541). Both as to matters included and omitted, the District Court's declaratory judgment and injunction constituted a final decree within the meaning of this Court's rules.

The finality of the decree below is not of significant interest in the instant appeal, however, because it is manifestly clear that these appellants have fully complied with this Court's rules applicable both to interlocutory and final decrees. The court below rejected the application of population standards for the upper house of the Legislature of Alabama. This appeal presents the contention that both with respect to its declaratory action and the

injunctive orders issued pursuant thereto, the decree of the District Court perpetuates invidious discrimination in direct violation of the Fourteenth Amendment. The showing demanded by Rule 15 (g) is implicit in such a contention. Compliance with the rule does not depend on a ritualistic quotation of its wording. If the citizens of the more populous counties of Alabama are to be denied a hearing on their right to Equal Protection of Laws, such denial should be grounded on more substantial stuff than movants' single contention here.

CONCLUSION.

Appellants respectfully submit that the contention of non-compliance with Rule 15 (g) is frivolous and urge that probable jurisdiction be noted and the case advanced to the argument calendar for full consideration.

Respectfully submitted,

.....
DAVID J. VANN,
2100 Comer Building,
Birmingham, Alabama.

.....
ROBERT S. VANCE,
1703 Comer Building,
Birmingham, Alabama.

.....
C. H. ERSKINE SMITH,
First National Building,
Birmingham, Alabama,
Attorneys for Appellants.

Proof of Service.

I, ..., an agent for the appellants herein, depose and say that on the .... day of

December, 1962, I served copies of the foregoing Brief Opposing Amended Motion to Dismiss or Affirm on each of the appellees herein and on each of the parties in the court below, by mailing copies via U. S. Mail in duly addressed envelopes with airmail postage prepaid, to their respective attorneys of record or, if none, to them personally as follows:

1. On Hon. MacDonald Gallion, Attorney General of Alabama, Montgomery, Alabama, Attorney of Record for himself and for Hon. Bettye Frink.

2. On Boswell and Smith, Geneva, Alabama, Attorneys of Record for Judge Harrell Hammonds.

3. On Judge John A. Sankey, Court House, Montgomery, Alabama.

4. On Judge J. Paul Meeks, Court House, Birmingham, Alabama.

5. On Hon. John Grenier, Comer Building, Birmingham, Alabama.

6. On Hon. Perry O. Hooper, Washington Building, Montgomery, Alabama.

7. On Roy D. McCord, Esquire, Gadsden, Alabama, Attorney for Hon. H. G. Rains.

8. On Hon. Roy Mayhall, Court House, Jasper, Alabama.

9. On Charles Morgan, Jr., Esquire, Bank for Savings Building, Birmingham, Alabama, Attorney for original plaintiffs.

10. On John W. McConnell, Jr., Esquire, 1101 Merchants National Bank Building, Mobile, Alabama, Attorney for intervening plaintiffs McConnell et al.

11. On Cooper, Mitch & Crawford, Bank for Savings Building, Birmingham, Alabama, Attorneys for intervening plaintiffs Farr et al.

12. On Thomas G. Gayle, Esquire, 1104½ Water Avenue, Selma, Alabama, Attorney for appellant Reynolds.

13. On Rankin Fite, Esquire, Hamilton, Alabama, Attorney for appellant Pearce.

.....

Subscribed and sworn to before me this .... day of December, 1962.

.....
Notary Public.

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Supreme Court of the United States

OCTOBER TERM, 1963.

No. 23.

B. A. REYNOLDS, ETC., ET AL.,
Appellants,

versus

M. O. SIMS, ET AL.,
Appellees.

No. 27.

DAVID J. VANN AND ROBERT S. VANCE,
Appellants,

versus

BETTYE FRINK, SECRETARY OF STATE OF THE STATE OF ALABAMA, ET AL.,
Appellees.

No. 41.

JOHN W. McCONNELL, JR., ET AL.,
Appellants,

versus

BETTYE FRINK, SECRETARY OF STATE OF THE STATE OF ALABAMA, ET AL.,
Appellees.

Appeals from the United States District Court for the Middle District of Alabama, Northern Division.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1963.

No. 23.

B. A. REYNOLDS, ETC., ET AL.,
Appellants,

versus

M. O. SIMS, ET AL.,
Appellees.

Appeals from the United States District Court for the Middle District of Alabama, Northern Division.

BRIEF FOR APPELLANTS, B. A. REYNOLDS, ETC., ET AL.

OPINION BELOW.

The opinion of the District Court for the Middle District of Alabama, is reported as *Sims vs. Frink*, 208 F. Supp. 431. A preliminary opinion entered April 14, 1962, is reported at 205 F. Supp. 245.

JURISDICTION.

(a) This suit was brought under 28 U. S. C. § 1343 (3) and (4) (62 Stat. L. 932, as amended); 42 U. S. C. § 1983 and § 1988 (17 Stat. L. 13 and 16 Stat. L. 144, as amended); and 28 U. S. C. § 2201 (62 Stat. L. 964; as amended 72 Stat. L. 349), seeking to have certain statutes and acts of The Legislature relating to the reapportionment of the Legislature of Alabama declared unconstitutional, and for injunctive relief. The judgment of the District Court was entered on July 25th, 1962 and notice of appeal was filed in that Court on August 17th, 1962. The jurisdictional statement was filed in this Court on October 12th, 1962, and the Court noted probable jurisdiction on June 10th, 1963. The jurisdiction of the Supreme Court by direct appeal is conferred by Title 28, U. S. C., Section 1253 (62 Stat. L. 926).

(b) The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Baker v. Carr*, 82 S. Ct. 691 (1962), *Palmetto Fire Ins. Co. v. Conn.*, 272 U. S. 295, 47 S. Ct. 88; *Oklahoma Gas and Electric Co. v. Oklahoma Packing Co.*, 292 U. S. 386, 54 S. Ct. 732; *Ex parte Public National Bank*, 278 U. S. 101, 49 S. Ct. 43; *Ex parte Collins*, 277 U. S. 565, 48 S. Ct. 585.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

The following Sections of the Alabama Constitution of 1901 prescribe the number of members of the Senate and House of Representatives of the Legislature of Alabama and method of apportioning the members of the Legislature among the Counties of the State:

> Art. 4, Sec. 50. The Legislature shall consist of not more than thirty-five Senators, and not more than one hundred and five members of the House of Representatives, to be apportioned among the several districts and counties as prescribed in this Constitution; provided that in addition to the above number of Representatives each new county hereafter created shall be entitled to one Representative. Vol. 1, p. 109, Code of Alabama 1940.

> Art. 9, Sec. 197. The whole number of Senators shall be not less than one-fourth, or more than one-third of the whole number of Representatives. Vol. 1, p. 202, Code of Alabama 1940.

> Art. 9, Sec. 198. The House of Representatives shall consist of not more than one hundred and five members unless new counties shall be created, in which event each new county shall be entitled to one representative. The members of the House of Representatives shall be apportioned by the Legislature among the several counties of the State, according to the number of inhabitants in them respectively, as ascertained by the decennial census of the United States, which apportionment when made shall not be subject to alteration until

the next session of the Legislature after the next decennial census of the United States shall have been taken. Vol. 1, p. 202, Code of Alabama 1940.

Art. 9, Sec. 199. It shall be the duty of the Legislature at its first session after the taking of the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the number of Representatives, and apportion them among the several counties of the state, according to the number of inhabitants in them respectively; provided, that each county shall be entitled to at least one Representative. Vol. 1, p. 202, Code of Alabama 1940.

Art. 9, Sec. 200. It shall be the duty of the Legislature at its first session after taking the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the number of Senators and to divide the State into as many Senatorial districts as there are Senators, which districts shall be as nearly equal to each other in the number of inhabitants as may be, and each shall be entitled to one Senator, and no more; and such districts when formed, shall not be changed until the next apportioning session of the Legislature, after the next decennial census of the United States shall have been taken; provided, that counties created after the next preceding apportioning session of the Legislature may be attached to Senatorial districts. No County shall be divided between two districts, and no district shall be made up of two or more counties not contiguous

to each other. Vol. 1, p. 202, Code of Alabama 1940.

Art. 9, Sec. 201. Should any decennial census of the United States not be taken, or if when taken, the same, as to this state, be not full and satisfactory, the Legislature shall have power at its first session after the time shall have elapsed for the taking of said census, to provide for an enumeration of all the inhabitants of this State, upon which it shall be the duty of the Legislature to make the apportionment of Representatives and Senators as provided for in this article. Vol. 1, p. 203, Code of Alabama 1940.

Art. 9, Sec. 202. Until the legislature shall make an apportionment of representatives among the several counties, as provided in the preceding section, the counties of Autauga, Baldwin, Bibb, Blount, Cherokee, Chilton, Choctaw, Clay, Cleburne, Coffee, Colbert, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dale, DeKalb, Escambia, Fayette, Franklin, Geneva, Greene, Lamar, Lawrence, Limestone, Macon, Marion, Marshall, Monroe, Pickens, Randolph, St. Clair, Shelby, Washington, and Winston, shall each have one representative; the counties of Barbour, Bullock, Butler, Calhoun, Chambers, Clarke, Elmore, Etowah, Hale, Henry, Jackson, Lauderdale, Lee, Lowndes, Madison, Marengo, Morgan, Perry, Pike, Russell, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, and Wilcox, shall each have two representatives; the counties of Dallas and Mobile shall each have three representatives; the county of Montgomery shall have four representatives;

and the county of Jefferson shall have seven representatives. Vol. 1, p. 203, Code of Alabama 1940.

Art. 18, Sec. 284 . . . Representation in the Legislature shall be based upon population, and such basis of representation shall not be changed by constitutional amendment. Vol. 1, p. 287, Code of Alabama 1940.

Sections 42 and 43 of Art. 3 of the Constitution of 1901 and Section 44 of Art. 4 read as follows:

Section 42. The powers of the government of the State of Alabama shall be divided into three distinct departments; each of which shall be confided to a separate body of magistracy, to-wit: Those which are legislative, to one; those which are executive, to another; and those which are judicial, to another. Vol. 1, p. 88, Code of Alabama 1940.

Section 43. In the government of this state, except in the instances in this Constitution hereinafter expressly directed or permitted, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end that it may be a government of laws and not of men. Vol. 1, p. 91, Code of Alabama 1940.

Section 44. The legislative power of this state shall be vested in a legislature, which shall consist

of a senate and a house of representatives. Vol. 1, p. 92, Code of Alabama 1940.

The following statutes were declared unconstitutional in this suit:

Act Number 93, Senate Bill 29, commonly referred to as the "67-Senator Amendment" proposing an amendment to the Constitution of Alabama relating to Legislative apportionment as passed in the 1962 Special Session of the Legislature of Alabama, (Acts of Alabama, Special Session 1962, p. 124) which reads as follows:

> An Act, proposing an amendment to the Constitution of Alabama relating to legislative apportionment. BE IT ENACTED BY THE LEGISLATURE OF ALABAMA: Section 1. The following amendment to the Constitution of Alabama 1901 is proposed and shall become valid as a part thereof when approved and proclaimed as prescribed by law: Proposed Amendment 1. The legislature of Alabama shall consist of a senator for each county and 106 members of the house of representatives, to be apportioned among the several counties as herein prescribed; provided, that in addition to the above number of representatives each new county hereafter created shall be entitled to at least one representative. 2. At the general election in 1966, and every four years thereafter, a senator shall be elected by the qualified electors of each county in the state. 3. At the general election in 1966, and every four years thereafter, until the house of representatives is reapportioned as herein provided, the qualified electors of each county in the

state shall elect such number of representatives as may be apportioned to the county as follows: The County of Jefferson shall have and elect seventeen representatives; the county of Mobile shall have and elect eight representatives; the County of Montgomery shall have and elect four representatives; the counties of Calhoun, Etowah, Madison and Tuscaloosa shall each have and elect three representatives; the counties of Dallas, Lauderdale, Morgan, Talladega and Walker shall each have and elect two representatives; and the remaining counties of the state shall each have and elect one representative. 4. On the first day, or within one week thereafter, of the regular session of the legislature in 1971, and every fifth regular session thereafter, the clerk of the house of representatives shall transmit to the secretary of state a statement showing the whole number of persons in each county under the most recent decennial census of the United States, and the number of representatives to which each county will be entitled under an apportionment of the then existing number of representatives by the method known as the method of equal proportions, no county to receive less than one representative. 5. In Section 284 of this Constitution as amended, strike out the last sentence thereof and insert the following sentence: Representation in the house of representatives of the legislature shall be based upon population. 6. Article IX (sections 197-203) of this Constitution is hereby expressly repealed. Section 2. An election upon the proposed amendment is ordered to be held on the date of the general election next succeeding the final adjournment of the current session of the Legislature. The election

shall be held in accordance with the provisions of Sections 284 and 285 of the Constitution of Alabama, as amended, and Chapter 1, Article 18, Title 17 of the Code of Alabama 1940. Section 3. Notice of the election and of the proposed amendment shall be given by proclamation of the Governor, which proclamation shall be published once a week for four successive weeks next preceding the day appointed for the election in a newspaper in each county of the State. In every county in which no newspaper is published, a copy of the notice shall be posted at each courthouse and post office.

Act Number 91, House Bill 59, commonly referred to as the "Crawford-Webb Bill" passed in the 1962 Special Session of the Legislature of Alabama (Acts of Alabama, Special Session 1962, p. 121) and approved by the Governor of the State of Alabama on July 12th, 1962 is as follows:

An Act, to fix the number of senators and representatives in the legislature, divide the state into senatorial districts, and apportion the senators and representatives among the several districts and counties.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. The senate of the legislature shall be composed of 35 senators representing 35 senatorial districts, each district to elect one senator and no more.

Section 2. The state is hereby divided into 35 senatorial districts as follows:

First, the counties of Lauderdale and Limestone; second, the counties of Lawrence and Morgan; third, the counties of Cullman and Winston; fourth, the county of Madison; fifth, the counties of Jackson and Marshall; sixth, the county of Etowah; seventh, the county of Calhoun; eighth, the county of Talladega; ninth, the counties of Randolph and Chambers; tenth, the counties of Elmore and Tallapoosa; eleventh, the county of Tuscaloosa; twelfth, the counties of Fayette and Walker; thirteenth, the county of Jefferson; fourteenth, the counties of Pickens and Lamar; fifteenth, the counties of Autauga, Chilton and Shelby; sixteenth, the counties of Monroe and Wilcox; seventeenth, the counties of Butler, Covington and Conecuh; eighteenth, the counties of Bibb and Perry; nineteenth, the counties of Clarke, Choctaw and Washington; twentieth, the counties of Marengo and Sumter; twenty-first, the counties of Baldwin and Escambia; twenty-second, the counties of Blount and St. Clair; twenty-third, the counties of Dale and Geneva; twenty-fourth, the counties of Barbour and Pike; twenty-fifth, the counties of Coffee and Crenshaw; twenty-sixth, the counties of Bullock and Macon; twenty-seventh, the counties of Lee and Russell; twenty-eighth, the county of Montgomery; twenty-ninth, the counties of Cherokee and DeKalb; thirtieth, the counties of Dallas and Lowndes; thirty-first, the counties of Colbert, Franklin and Marion; thirty-second, the counties of Greene and Hale; thirty-third, the county of Mobile; thirty-fourth, the counties of Coosa, Clay

and Cleburne; thirty-fifth, the counties of Henry and Houston. In districts consisting of more than one county, the senators shall not be elected for more than one term consecutively from any one county in the district, but shall reside in and be elected alternately and in turn from each of the counties within such district. The first senator to be elected in such district shall reside in the county having the largest population, except where that county had the last preceding senator. It is provided, however, that any senator in office on the effective date of this enactment shall be eligible to succeed himself as a member of the Senate, any other provision of this paragraph to the contrary notwithstanding.

Section 3. The house of representatives of the legislature shall consist of 106 members distributed among the several counties of the state as follows:

The county of Jefferson shall have and elect 12, the county of Mobile 6, and the county of Montgomery 4, the counties of Calhoun, Etowah, Madison and Tuscaloosa 3 each, the counties of Baldwin, Colbert, Cullman, Dallas, Houston, Lauderdale, Lee, Marshall, Morgan, Russell, Talladega and Walker 2 each, and the remaining counties 1 each.

Section 4. This Act shall take effect for the election of Senators and Representatives at the general election to be held in November, 1966, and shall be effective thereafter until the legislature is reapportioned according to law.

Section 5. The provisions of this Act are severable. If any part of this Act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

Also Sections 1 and 2 of Title 32 of the 1940 Code of Alabama which are as follows:

(1) House of Representatives. The house of representatives of the legislature consists of one hundred and six members, distributed among the several counties as follows: The counties of Autauga, Baldwin, Bibb, Blount, Cherokee, Chilton, Choctaw, Clay, Cleburne, Coffee, Colbert, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dale, DeKalb, Escambia, Fayette, Franklin, Geneva, Greene, Houston, Lamar, Lawrence, Limestone, Macon, Marion, Marshall, Monroe, Pickens, Randolph, Shelby, St. Clair, Washington and Winston shall each elect one representative. The counties of Barbour, Bullock, Butler, Calhoun, Chambers, Clarke, Elmore, Etowah, Hale, Henry, Jackson, Lauderdale, Lee, Lowndes, Madison, Marengo, Morgan, Perry, Pike, Russell, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker and Wilcox shall each elect two representatives. The counties of Dallas and Mobile shall each elect three representatives. The county of Montgomery shall elect four representatives; and the county of Jefferson shall elect seven representatives.

(2) Senatorial Districts. The senate of the legislature shall consist of thirty-five members, and the state is divided into thirty-five senatorial districts, as follows: First, Lauderdale and Lime-

stone; second, Lawrence and Morgan; third, Blount, Cullman and Winston; fourth, Madison; fifth, Jackson and Marshall; sixth, Etowah and St. Clair; seventh, Calhoun; eighth, Talladega; ninth, Chambers and Randolph; tenth, Tallapoosa and Elmore; eleventh, Tuscaloosa; twelfth, Fayette, Lamar and Walker; thirteenth, Jefferson; fourteenth, Pickens and Sumter; fifteenth, Autauga, Chilton and Shelby; sixteenth, Lowndes; seventeenth, Butler, Conecuh, and Covington; eighteenth, Bibb and Perry; nineteenth, Choctaw, Clarke and Washington; twentieth, Marengo; twenty-first, Baldwin, Escambia and Monroe; twenty-second, Wilcox; twenty-third, Dale and Geneva; Twenty-fourth, Barbour; twenty-fifth, Coffee, Crenshaw, and Pike; twenty-sixth, Bullock and Macon; twenty-seventh, Lee and Russell; twenty-eighth, Montgomery; twenty-ninth, Cherokee and DeKalb; thirtieth, Dallas; thirty-first, Colbert, Franklin and Marion; thirty-second, Greene and Hale; thirty-third, Mobile; thirty-fourth, Clay, Cleburne and Coosa; thirty-fifth, Henry and Houston.

The following federal statutes are involved:

28 U. S. C. §1343 (3) and (4) (62 Stat. L. 932, as amended); 42 U. S. C. §1983 and §1988 (17 Stat. L. 13 and 16 Stat. L. 144, as amended); and 28 U. S. C. §2201 (62 Stat. L. 964, as amended 72 Stat. L. 349), which are set forth in Appendix "1" *infra* at page 45. The United States Constitution, Amendment Fourteen, Sections 1 and 2, which are set forth in Appendix "2" *infra* at page 48.

THE QUESTIONS PRESENTED FOR REVIEW.

1. Ought the three-judge District Court to have exercised jurisdiction in this cause?

2. Does the Federal District Court have constitutional power to reapportion the Legislature of Alabama by affirmative action?

3. Does Article IV of the Constitution of the United States prohibit a Federal Court from asserting power and authority over a state legislature?

4. Was the apportionment of both Houses of the Legislature of the State of Alabama (which apportionment was pursuant to Article 9, §§ 202 and 203 of the Constitution of Alabama of 1901 and §§ 1 and 2, Title 32, Code of Alabama) "invidious discrimination" in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States?

5. Were the appellees in this cause denied the equal protection of the law accorded them by the Fourteenth Amendment to the Constitution of the United States by the failure of the Legislature to reapportion itself on a strictly population basis?

6. Is a "little federal system" in a state legislature constitutional, or must both the senate and house be apportioned strictly according to population?

7. Should the Court have declared invalid a proposed amendment to the Constitution of Alabama which by the act of the Legislature is to be submitted to the people of the state?

8. Is Act No. 93, Senate Bill 29, commonly referred to as the "67-Senator Amendment", proposing an amendment to the Constitution of Alabama relating to legislative apportionment as passed in the 1962 Special Session of the Legislature for the State of Alabama on July 12, 1962, an unconstitutional proposal within the meaning of the equal protection provisions of the Fourteenth Amendment to the Constitution of the United States?

9. Is the Act No. 91, House Bill 59, commonly referred to as the "Crawford-Webb Bill", passed in the 1962 Special Session of the Legislature and approved by the Governor of the State of Alabama, on July 12, 1962, an unconstitutional act within the meaning of the equal protection provisions of the Fourteenth Amendment to the Constitution of the United States?

10. How rapidly should the Courts move to remedy Legislature malapportionments?

STATEMENT OF THE CASE.

This is an appeal by B. A. Reynolds as Judge of Probate of Dallas County, Alabama and Frank Pearce as Judge of Probate of Marion County, Alabama, two of the Probate Judges who as a class were Defendants in

the Court below and against whom a decree was rendered adjudging and decreeing certain statutes of the State of Alabama, relating to the reapportionment of the Legislature of Alabama to be unconstitutional and void, and reapportioning the Legislature of Alabama by judicial decree, and in ordering and enjoining these Appellants and the other Defendants in said suit from taking any action that would hinder or obstruct the Court's decree in apportioning the Legislature. R. 197.

The appellees, as individuals and as voters and tax payers of the State of Alabama, on their behalf and others similarly situated, sued Bettye Frink, as Secretary of State of the State of Alabama, the sixty-seven Probate Judges of the State, and other officials who are charged by law with performing and exercising certain duties and powers in connection with the nomination and election of the members of the Alabama Legislature. The suit alleged a denial of the equal protection of the law as preserved under the Fourteenth Amendment to the Constitution of the United States because of the failure of the Legislature of Alabama to reapportion legislative districts on the basis of population as provided by the State Constitution. R. 1.

Appellees in their said suit prayed for a declaration of rights pursuant to 28 U. S. C. Sec. 2201, 58 Stat. L. 890, and that the apportionment of the Legislature as established under Secs. 1 and 2 of Title 32 of the Alabama Code of 1940, as amended and Secs. 202 and 203 of Article 9 of the Constitution of Alabama 1901 be declared void and invalid as being contrary to the duty

of the State of Alabama to reapportion the Legislature, and because of the failure to reapportion the Legislature in accordance with the present population of the state; R. 26-27, that each of the defendants named in the complaint who had duties to perform in connection with the nomination and election of members of the Legislature be enjoined and restrained from exercising such duties until such time as the Legislature of Alabama reapportions itself in accordance with the applicable provisions of the Constitution of Alabama; they further prayed that the Court should require the next primary and general elections for members of the Alabama Legislature be held on an at-large basis. R. 27-32.

The Attorney General of the State of Alabama and Bettye Frink, Secretary of State of the State of Alabama answered the complaint in which they alleged among other things that: 1. The Court lacks jurisdiction of the subject matter. 2. The Complaint fails to state a claim upon which relief can be granted against this Defendant. One of the Probate Judges moved to dismiss the Complaint on the same ground. R. 40-43.

On March 29th, 1962, appellees filed a motion for preliminary injunction praying that the defendants be enjoined from failing or refusing to prepare the necessary ballots to be used in the Democratic Primary Election in May, and in the general election in November, 1962, in such a manner as would require the election of members of both the House of Representatives and the Senate of the State of Alabama on an

at-large basis, and to take whatever further action was necessary to insure that all candidates for party nomination for election to the Legislature run at large throughout the State. R. 47.

By its order dated March 30th, 1962, the application for interlocutory injunction was assigned for hearing on April 14th, 1962, R. 57, and was thereafter continued until July 16th, 1962. In the order dated April 14th, 1962 the Court made the following remarks: R. 62.

> "We remain of the same opinion that was expressed in the order setting the application for hearing, viz: until the Legislature has had a further reasonable but prompt opportunity to comply with its duty under Sections 199 and 200 of the Constitution of Alabama, this Court should take no action not absolutely essential for the protection of the constitutional rights asserted in the complaint; and no ruling before the primary elections of May 1962 appears essential.
>
> "The application for interlocutory injunction pertains to the conduct of both the primary elections of May 1962 and the general election of November 1962. That application is therefore continued and re-set for hearing at 10 o'clock a.m. on Monday, July 16, 1962. The hearing cannot be set for a much later date because, if this Court is to act effectively, some action must be taken in ample time before the general election of November 1962.
>
> "For the guidance of counsel and for such aid as we may be in solving the troublesome but im-

portant subject of this litigation, we make the following additional remarks:

"(1) Under the opinion of the Supreme Court of the United States in Baker v. Carr, No. 6, October Term, 1961, decided March 26, 1962, it seems clear to us that: (a) this Court has jurisdiction of the present action; (b) the complaint as amended states a justiciable cause of action; (c) the plaintiffs have standing to challenge the Alabama apportionment statutes." R. 62.

On June 28th, 1962, the appellees amended their complaint by asking in their prayer for relief that the Court enter an order provisionally reapportioning the house of representatives of Alabama and provisionally redistricting the senate of Alabama and in such order start with existing apportionment of the members of the house of representatives and existing senatorial districts, alter or consolidate some of them, and award the seats thus released to those counties suffering discrimination. R. 69. On the same day certain intervening plaintiffs amended the prayer for relief in their complaint by asking the Court to require that the members of the house of representatives of the State of Alabama be elected in the November general elections according to a plan which they submitted to the Court in their amendment. R. 71.

After the Court's order of March 30th, 1962, the Governor of Alabama called a special session of the Legislature to consider reapportioning the legislature of Alabama and on July 12th, 1962, the legislature

passed a proposed constitutional amendment, commonly referred to as the "67-Senator Amendment", this proposed constitutional amendment being subject to ratification of the voters of Alabama in an election to be held in November, 1962. R. 157. On the same date the Governor of Alabama signed into law the "Crawford-Webb Bill", which was to take effect in the event the voters of Alabama refused to ratify the proposed "67-Senator Amendment". R. 160. Both of these acts provided for the reapportionment of the legislature of the state of Alabama.

On July 13th, one day after the passage of said acts the Secretary of State of the State of Alabama amended her answer and alleged the following:

> "A. Since the filing of this suit and before July 16, 1962, the Legislature of Alabama has passed two acts relating to reapportionment of its membership. (Same acts above referred to as "67-Senator Amendment" and the "Crawford-Webb Bill" R. 157, R. 160.)
>
> B. The said acts have now rendered the plaintiffs' and intervenors' complaints as ones which do not present a claim upon which relief may be granted.
>
> C. The said acts have caused this case to present matters which have become moot and the suit is subject to dismissal by the Court.
>
> D. The said acts comply with all constitutional standards subject to Federal jurisdiction, but if

this defendant is mistaken she respectfully requests the Court for further guidance as to what specific action the Legislature must take in order to comply with the Court's order of April 14, 1962. In this connection defendant avers that the present Legislature is in recess and another will be elected in November 1962.

E. Defendant avers that compliance with constitutional standards, if not now met, may be met by the Legislature if it knows specifically what the Court requires." R. 106.

On said date, the Attorney General of the State of Alabama likewise filed an answer in which he alleged that the two Acts above referred to, namely: the "67-Senator Amendment" and the "Crawford-Webb Bill" meet the constitutional standards referred to by the Court in its order of April 14th, 1962. That the Constitutional Convention of 1901 placed in the organic law Secs. 197, 198, 199, 200 and 201 of Art. 9 of the Constitution of 1901 and that these sections render it impossible to apportion both Houses or either House on a strictly population basis. In his said answer he also alleged the following:

"That by Art. 9, Constitution of Alabama 1901, and subsequent statutes, the House consists of 106 members and the Senate 35; that the whole number of senators shall be not less than one-fourth or more than one-third of the whole number of representatives; that the State is to be divided into as many senatorial districts as there are senators, which districts shall be as nearly equal to each

other in the number of inhabitants as may be; each district to have one senator and no more; no county shall be divided between two districts, and no district shall be made up of two or more counties not contiguous to each other.

Jefferson County has always been considered as a separate senatorial district. According to the last Federal Census, it has a population of 634,864. The state population is 3,266,740, roughly five times the population of Jefferson. To fix districts on the basis of population considering Jefferson County as a separate district there could be only five in all and five senators in all. Since the number of senators shall be not less than one-fourth or more than one-third of the whole number of representatives, twenty house members would be required for a five member senate. This cannot be, however, because each county is entitled to one representative, sixty-seven in all. . . .

That the acts were passed in good faith after careful and deliberate consideration by both the Senate and House, and in the context of this case present a rational plan involving no invidious discrimination". R. 107-110.

Some nine days after the passage of said Acts and on July 21st, 1962, the District Court filed its opinion in this case, R. 137, and on July 25th, 1962, thirteen days after the passage of said reapportionment statutes by the Alabama Legislature, filed its decree in this case, and declared said statutes unconstitutional and by its decree proceeded to reapportion the legis-

lature of Alabama. R. 173. In said decree the Court held:

(1) That the plaintiffs, as citizens of the United States and of the State of Alabama, are denied the equal protection of the law accorded them by the Fourteenth Amendment to the Constitution of the United States by virtue of the debasement of their votes since the Legislature of the State of Alabama has failed and continues to fail to reapportion itself as required by law.

(2) That the present apportionment of both Houses of the Legislature of the State of Alabama (which apportionment is pursuant to Article 9, §§ 202 and 203 of the Constitution of Alabama of 1901 and §§1 and 2, Title 32, Code of Alabama) constitutes "invidious discrimination" in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

(3) That Act No. 93, Senate Bill 29, commonly referred to as the "67-Senator Amendment," proposing an amendment to the Constitution of Alabama relating to legislative apportionment as passed in the 1962 Special Session of the Legislature for the State of Alabama on July 12, 1962, be and the same is hereby declared to be an unconstitutional proposal within the meaning of the equal protection provisions of the Fourteenth Amendment to the Constitution of the United States.

(4) That Act No. 91, House Bill 59, commonly referred to as the "Crawford-Webb Bill," passed in the 1962 Special Session of the Legislature and approved by the Governor of the State of Alabama on July 12, 1962, be and the same is hereby declared to be an unconstitutional Act within the meaning of the equal protection provisions of the Fourteenth Amendment to the Constitution of the United States.

(5) That Act No. 93, Senate Bill 29 (commonly referred to as the "67-Senator Amendment") and Act No. 91, House Bill 59 (commonly referred to as the "Crawford-Webb Bill"), both having been passed by the 1962 Special Session of the Legislature for the State of Alabama, are each void, invalid and ineffective to the extent that they attempt to correct the denial of the plaintiffs' rights, said denial arising from the debasement of plaintiffs' votes in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. R. 174-175.

The Court in its said decree then enjoined the Appellants, and the other officers of the State of Alabama who were charged with certain duties pertaining to elections in Alabama "from furnishing forms for nominations, from receiving nominations, petitions and papers, from certifying nominations, nominees, or elections, and from any other act necessary to the holding of elections, including primary elections, for members of the Alabama Legislature in districts as established by Article 9, §§ 202 and 203 of the Constitution of Alabama of 1901, and §§ 1 and 2, Title 32, Code of Ala-

bama, except in accordance with the order and opinion of this Court filed herein on July 21, 1962 and except and in accordance with the apportionment of the Alabama Legislature as hereinafter specifically set out." R. 177.

The Court then proceeded to reapportion the State of Alabama and decreed:

> "(1) That the membership of the House of Repsentatives for the State of Alabama, effective on the day after the general election to be held in November, 1962, be and the same is hereby apportioned as follows:
>
> The County of Jefferson shall have and elect seventeen representatives; the County of Mobile shall have and elect eight representatives; the County of Montgomery shall have and elect four representatives; the Counties of Calhoun, Etowah, Madison and Tuscaloosa shall each have and elect three representatives; the Counties of Dallas, Lauderdale, Morgan, Talladega and Walker shall each have and elect two representatives; and the remaining counties of the State of Alabama shall each have and elect one representative."
>
> (2) That the Senate of the State of Alabama be and the same is hereby apportioned as follows:
>
> First District: The Counties of Lauderdale and Limestone.
>
> Second District: The Counties of Lawrence and Morgan.

Third District: The Counties of Cullman and Winston.

Fourth District: The County of Madison.

Fifth District: The Counties of Jackson and Marshall.

Sixth District: The County of Etowah.

Seventh District: The County of Calhoun.

Eighth District: The County of Talladega.

Ninth District: The Counties of Randolph and Chambers.

Tenth District: The Counties of Elmore and Tallapoosa.

Eleventh District: The County of Tuscaloosa.

Twelfth District: The Counties of Fayette and Walker.

Thirteenth District: The County of Jefferson.

Fourteenth District: The Counties of Pickens and Lamar.

Fifteenth District: The Counties of Autauga, Chilton and Shelby.

Sixteenth District: The Counties of Monroe and Wilcox.

Seventeenth District: The Counties of Butler, Covington and Conecuh.

Eighteenth District: The Counties of Bibb and Perry.

Nineteenth District: The Counties of Clarke, Choctaw and Washington.

Twentieth District: The Counties of Marengo and Sumter.

Twenty-first District: The Counties of Baldwin and Escambia.

Twenty-second District: The Counties of Blount and Saint Clair.

Twenty-third District: The Counties of Dale and Geneva.

Twenty-fourth District: The Counties of Barbour and Pike.

Twenty-fifth District: The Counties of Coffee and Crenshaw.

Twenty-sixth District: The Counties of Bullock and Macon.

Twenty-seventh District: The Counties of Lee and Russell.

Twenty-eighth District: The County of Montgomery.

Twenty-ninth District: The Counties of Cherokee and DeKalb.

Thirtieth District: The Counties of Dallas and Lowndes.

Thirty-first District: The Counties of Colbert, Franklin and Marion.

Thirty-second District: The Counties of Greene and Hale.

Thirty-third District: The County of Mobile.

Thirty-fourth District: The Counties of Coosa, Clay and Cleburne.

Thirty-fifth District: The Counties of Henry and Houston. R. 177-179.

The Court, in its said decree, further ordered and decreed that the apportionment of the Alabama Legislature should be effective upon the filing of the decree and ordered, directed and enjoined the Secretary of the State of Alabama, the sixty-seven Probate Judges of the State, including appellants, and other officials who were defendants in the case and who are charged by law with performing and exercising certain duties and powers in connection with the nomination and election of the members of the Alabama Legislature to select and nominate and provide for the election to be held in November, 1962, of the members of the House

of Representatives and members of the Senate for the State of Alabama in accordance with the foregoing apportionment. R. 179-191.

This appeal is from the final decree, pursuant to 28 U.S.C. Sec. 1253. Probable jurisdiction was noted June 10, 1963.

SUMMARY OF ARGUMENT.

Legislative reapportionment should be resolved without federal interference. This Court should reconsider its decision in *Baker v. Carr*, 369 U. S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663, and return to the original constitutional proposition that courts do not interfere with the political structure of state governments.

Even under the decision of this Court in *Baker v. Carr*, the District Court should not have retained jurisdiction in this case, because the factual situation in the case at bar is different from the one considered in the Tennessee case. In Alabama the apportionment of the Legislature is based on a population rather than a voter basis and the number of seats in the House are limited to 106 and each one of the 67 counties of the state is entitled to at least one representative. The apportionment of the State Senate is limited to 35 members and is divided into two senatorial districts according to population and the Constitution provides that "no county shall be divided into two districts,

and no district shall be made up of two or more counties not contiguous to each other".

Unlike the Tennessee case, while this suit was pending, the Alabama Legislature passed two acts—one of which was patterned after the Congress, was called the "67-Senator Act" and provided for a constitutional amendment by which each county of the state was to have one senator, and after providing for one member of the House for each county of the state as required under the Alabama Constitution, the remaining members of the House were to be apportioned on a population basis—the other act passed by the Legislature was called the "Crawford-Webb Act" and was to take effect in the event the proposed constitutional amendment was not passed by a vote of the people of the state.

Neither one of said acts were invidious *per se*, but were based on rational state policy. Both of said acts were valid and constitutional acts of the Legislature and should not have been declared unconstitutional by the District Court.

In no event should the District Court have reapportioned the Legislature by affirmative action.

ARGUMENT.

The suit in this case is patterned after the suit brought by the voters of the State of Tennessee and decided by this Court in *Baker v. Carr*, 82 S. Ct. 691.

In the Tennessee case the plaintiffs, as in this case, claim that they were denied the equal protection of the law accorded them by the 14th Amendment of the Constitution of the United States by virtue of the debasement of their vote. A three judge district court dismissed the complaint and held it lacked jurisdiction of the subject matter. On appeal in *Baker v. Carr, supra*, this court reversed the case and merely held: "(a) that the court possessed jurisdiction of the subject matter; (b) that a justiciable cause of action is stated upon which appellants would be entitled to appropriate relief; and (c) * * * that the appellants have standing to challenge the Tennessee Apportionment Statutes". Mr. Justice Frankfurter and Mr. Justice Harlan dissented and wrote separate opinions. The District Court of Tennessee did not reach the merits of that claim and the Supreme Court expressed no view on the merits. Prior to *Baker v. Carr, supra*, the Supreme Court had consistently ruled that apportionment of congress or state legislatures was a political question and refused to assume jurisdiction in such cases. Illustrative of this are the cases of *Colegrove v. Green*, 328 U.S. 549, 66 S. Ct. 1198, 90 L. Ed. 1432; *MacDougall v. Green*, 335 U.S. 281, 69 S. Ct. 1, 93 L. Ed. 3; *South v. Peters*, 339 U.S. 276, 70 S. Ct. 641, 94 L. Ed. 834.

That the legislative powers of the people can be organized according to the dictates of a federal judiciary is in violation of the doctrine that the government shall be composed of the executive, legislative and judicial branches, each of whom should exercise separate, but

equal, powers. A federal judiciary that can dictate the organization of a state legislature can indirectly dictate the organization of the United States Congress because seats in its House of Representatives are districted and redistricted by act of state legislature. Legislative reapportionment should be resolved without federal interference.

The case at bar is illustrative of the confusion which can result from interference by the federal judiciary following the decision in *Baker v. Carr, supra.*

The soundness of the majority opinion in *Baker v. Carr,* has been questioned by members of the bar, courts and students of government and for that reason we urge the court to reconsider its decision in that case and return to the original constitutional proposition that courts do not interfere with the political structure of state government.

Even under the decision in *Baker v. Carr,* the district court should not have retained jurisdiction in this case because the factual situation in the case at bar is different from the one considered in the Tennessee case in the following respects:

Under the Tennessee Constitution, (Secs. 5 & 6) the apportionment of the house and senate was to make among the several counties or districts according to the number of qualified voters in each. In Alabama the apportionment of the legislature is based on a population rather than a voter basis, and the number

of seats in the house are limited to 106 and each one of the 67 counties of the state is entitled to at least one representative. Sections 197, 198 and 199 Alabama Constitution 1901. The apportionment of the state senate is limited to 35 senators and is divided into senatorial districts according to population and the constitution provides that "no county shall be divided into two districts, and no district shall be made up of two or more counties not contiguous to each other."—Sec. 200 of the Constitution of Alabama 1901.

Unlike the Tennessee Legislature which had not acted on reapportionment since the year, 1901, the Alabama Legislature while this suit was pending in an extraordinary session called by the Governor passed two acts, one of which was Act Number 93, Senate Bill 29, commonly referred to as the "67-Senator Amendment". This act proposed an amendment to the Constitution of Alabama relating to legislative apportionment which was to be submitted to a vote of the people and was declared by the lower Court to be an unconstitutional proposal within the meaning of the Equal Protection Provisions of the Fourteenth Amendment to the Constitution of the United States. The other act being Act Number 91, House Bill 59, commonly referred to as the "Crawford-Webb Bill", was likewise declared by the District Court to be an unconstitutional act within the meaning of the Equal Protection Clause of the Constitution.

Both of said acts were declared to be, "void, invalid, and ineffective" to the extent that they attempt to correct the denial of plaintiffs' rights, said denial arising

from the debasement of plaintiffs' votes in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. While the Court declared both of the aforesaid acts unconstitutional, in our opinion both of said acts were constitutional and valid reapportionment acts of the Legislature as we will subsequently point out in this brief.

After declaring said acts unconstitutional, the lower Court then assumed the duties of the Legislature, mapped the political structure of the state, and apportioned the Legislature by Judicial Decree according to its own views, all of which was hurriedly done in a period of some thirteen days.

The District Court's Decree reapportioning the Legislature was entered subsequent to the Democratic Primary in May and prior to the General Election to be held in November, 1962.

In *Baker v. Carr,* the District Court was not called on to "re-map" the state, or to hurriedly provide relief in the face of an impending election, and in that case appellants suggested a step-by-step approach, which did not involve an assumption by the District Court of legislative duties or responsibilities. (taken from page 20 of appellant's brief in *Baker v. Carr.)*

Should the Court have declared invalid a proposed amendment to the Constitution of Alabama which by the act of the legislature was to be submitted to a vote of the people of the state?

The proposed 67-Senator Act which was to be submitted to a vote of the people of the state was framed after the Federal System of government—namely one senator in each county of the state. The District Court in its decree accepted as completely satisfactory the provisions of this act as it relates to House reapportionment by the method of equal proportion. We will therefore discuss the merit of the 67-Senator Amendment as it relates to senatorial redistricting.

It is at once essential to recognize the basic issue involved here. It relates solely to the right of a state to structure its Legislature in accordance with provisions which it considers in the best interest of the state at large.

In declaring the proposed 67-Senator Amendment invalid, the District Court concluded as a matter of law that the people of this state cannot by Constitutional amendment or by Constitutional convention alter the basic structure of its Legislature. If unit representation in the Senate is invidious *per se*, then it would be futile to resort to convention to so provide.

In at least nine states today county or town units are given equal representation in the Legislative branch regardless of the number of each unit's inhabitants.

Among fourteen states it is required that there be one Senator for each district or else limit a district to one Senator.

There are twenty states in which each county or town unit is entitled to one representative in the Lower House. See Appendix "3" *infra* at page 49.

If the 67-Senate provision is not invidious *per se*, can it be said that it is invidious as being based on no rational policy? In this connection we would point out that there is nothing in the Federal Constitution to prevent a state acting not irrationally from choosing any electoral Legislative structure it thinks best suited to the interest, temper, and customs of its people. *MacDougall v. Green*, 335 U. S. 281, in which the Court observed that to "assume that political power is a function exclusively of numbers is to disregard the practicalities of government, and reaffirmed by *South v. Peters*, 339 U. S. 276.

It may be said that it results in gross inequality but even gross inequality may be justified if based upon a permissible state policy and is not arbitrarily and capriciously applied.

If it can be determined that the 67-Senate Amendment rests upon a permissible policy the function of the Federal judiciary ends upon such determination. We refer to Appendix 5 indicating the manner in which seven counties characterized by industrialization and fifty per cent or better of their population is represented by single or contiguous cities. It is submitted that such concentration of Legislative power into the hands of the industrial community of this state to the

extent of forty-one representatives represents a potential power of control in the House of Representatives such as to prevent submission of Constitutional amendments to the people. The power thus represented when exercised as a "stranglehold" can be sufficiently disruptive and obstructive as to prevent, if not in fact control, the distribution of revenues and the removal of agricultural tax exemptions to the detriment of all the people of Alabama.

Unless the people of Alabama are permitted to structure their Legislature in a manner to provide protection from the domination of a handful of cities, then the Court has as a matter of law asserted final authority and control over matters which properly should remain for Legislative and not judicial determination.

The Supreme Court of Alabama in Opinion of Justices 61 So. 2d 881, (1955), by a divided Court, held that notwithstanding the provisions of 284 of the Constitution the people could "legally and lawfully remove any provision from the Constitution which they previously put in or ratified, even to the extent of amending or repealing one of the sections comprising our Declaration of Rights, even though it is provided that they 'shall forever remain inviolate.'"

It is respectively submitted that the 67-Senator Act was a valid and constitutional act of the Legislature and should be submitted to a vote of the people.

Should the District Court have declared unconstitutional the Crawford-Webb Act of the Legislature?

With *Baker v. Carr* in mind, let us now examine the method of apportionment of the Alabama Legislature employed in this act.

It will be observed by reference to Appendix "4" *infra* at page 51, that the House apportionment provided by the Crawford-Webb Act is the method of smallest divisors with this minor exception two seats, which would ordinarily be apportioned to Jefferson County and one seat which would ordinarily be apportioned to Mobile County, have instead been apportioned one each to Russell, Cullman and Colbert Counties.

While the method of apportionment employed in the Crawford-Webb Act is not stated in the act, nor need it have been so stated, it is nevertheless obvious. The classifications used were reasonable, logical, rational and were designed to carry out unquestioned state policy of allocating State Legislative power in a manner to prevent unwholesome concentration of power. The population classifications upon which the Crawford-Webb Act is based, are as follows:

After providing one representative to each county, as provided for in the Constitution, the balance of thirty-nine House seats were apportioned according to population by classification:

Counties	45,000— 90,000	1 additional seat
Counties	90,000—150,000	2 additional seats
Counties	150,000—300,000	3 additional seats
Counties	300,000—600,000	5 additional seats
Counties	600,000 and over	11 additional seats

An apportionment based on the method of smallest divisors is an apportionment by known and accepted standards and even though biased in favor of small counties, such bias is consistent with and in furtherance of unquestioned state policy. This policy is clearly indicated by the separate provision of the Alabama Constitution designed to protect the small counties by the original apportionment of one to each county and by the additional provision of the Constitution limiting one county to a single Senatorial district.

Disparities in population as may appear are inherent in any and all mathematical methods of apportionment. The question is the degree of disparity and whether or not such disparity can be justified on the basis of state policy, and thus avoid the onus of invidiousness.

The minor deviations in the Crawford-Webb Act from an apportionment under the method of smallest divisors is justified and equitable and based upon legislative judgment concerning the best method of guaranteeing protection against concentration of political power in the Alabama Legislature.

Many states are apportioned under provisions which put definite limitations upon the number of Representatives, of Senators, as the case may be, from any one political unit. We refer the Court to the dissenting opinion of Justice Frankfurter in *Baker v. Carr*, in which a tabulation is made from the *Book of the States 1962-63* of apportionment methods previously employed throughout the United States.

What is involved in this suit is an abstract question of political power concerning the structure and organization of the Alabama Legislature. It would be utterly impossible to argue the wisdom of the state policy with respect to allocation of power without making of the Court a forum for political debate.

Test for Invidiousness.

While the United States Supreme Court may not have established guide lines in some respects, it seems to us that it did speak clearly in *Baker v. Carr* on the following points:

1. That gross population variations are not invidious *per se*.

2. That such discriminations are not invidious if they can be shown to conform to a rational state policy designed to protect the rural interests of the state from domination by other segments of the economy.

3. That to constitute "invidiousness" any discrimination based on population must equate "no

policy" or else be totally irrational as to defy any conceivable state of facts upon which to justify the discrimination.

It is respectively submitted that when the above test is applied the Crawford-Webb Act was a valid and constitutional act of the Legislature and should not have been declared unconstitutional by the District Court.

The District Court was not justified in apportioning the legislature of Alabama by judicial decree. As stated by Mr. Justice Frankfurter in his dissenting opinion in *Baker v. Carr*, 82 S. Ct. 691 (1962):

> "In all of the apportionment cases which have come before the Court, a consideration which has been weighty in determining their non-justiciability has been the difficulty or impossibility of devising effective judicial remedies in this class of case. An injunction restraining a general election unless the legislature reapportions would paralyze the critical centers of a State's political system and threaten political dislocation whose consequences are not foreseeable. A declaration devoid of implied compulsion of injunctive of other relief would be an idle threat. Surely a Federal District Court could not itself remap the State: the same complexities which impede effective judicial review of apportionment a fortiori make impossible a court's consideration of these imponderables as an original matter. And the choice of elections at large as opposed to elections by district, however unequal the districts, is a matter of sweep-

ing political judgment having enormous political implications, the nature and reach of which are certainly beyond the informed understanding of, and capacity for appraisal by, courts. - - -

"Although the District Court had jurisdiction in the very restricted sense of power to determine whether it could adjudicate the claim, the case is of that class of political controversy which, by the nature of its subject, is unfit for federal judicial action."

CONCLUSION.

Many questions are presented in this case which were not considered by the Court in *Baker v. Carr*. More is involved here than the rights of parties litigant. The very foundation of state government is at stake. If this decision is allowed to stand, then the State of Alabama and its sister states are not sovereign states.

It is therefore respectfully submitted that this Court should reconsider the decision in *Baker v. Carr* and should return to the original constitutional proposition that courts do not interfere with the political structure of states government; that this Court should determine and decree that the District Court did not have power or authority to reapportion the Legislature of Alabama, or if it did have such power the Court was not justified in apportioning the Legislature of Alabama by judicial decree; that the "67-Senator Act" and the "Crawford-Webb Act" were valid and constitutional acts of the Alabama Legislature; and that a

justiciable controversy did not exist between the appellants and the appellees in this case, and the case should have been dismissed by the District Court.

It is respectfully submitted that this case should be reversed and remanded to the District Court with directions that the judgment be vacated and the case be dismissed; and, that an election be held in accordance with the existing laws of the State of Alabama for members of the Legislature in accordance with the Statutes of that state as they existed prior to the judgment of the District Court in this case, upon call by the Governor of Alabama.

Respectfully submitted,

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APPENDIX "1".

FEDERAL STATUTES INVOLVED

28 U.S.C. §1343:

"*Civil rights and elective franchise.* The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

"(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote."

42 U.S.C. §1983:

"*Civil action for deprivation of rights.* Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

42 U.S.C. §1988:

"*Proceeding in vindication of civil rights.* The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

DECLARATORY JUDGMENTS ACT

28 U.S.C. §2201:

"*Creation of remedy.* In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."

APPENDIX "2".

UNITED STATES CONSTITUTION, amend. XIV, §§1 and 2:

§ 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

§ 2. Representatives shall be apportioned among the several states, according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice president of the United States, representatives in congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

APPENDIX No. 3.

TABLE OF STATES APPORTIONED UNDER PROVISIONS REQUIRING ONE SENATOR PER DISTRICT OR LIMITING A SENATORIAL DISTRICT TO ONE SENATOR

AUTHORITY: **BOOK OF THE STATES 1962-63**

Alabama	Nevada
California	New Jersey
Connecticut	New Mexico
Florida	South Carolina
Georgia	Texas
Idaho	Vermont
Iowa	Wyoming
Montana	

TABLE OF STATES
REQUIRING HOUSE REPRESENTATION OF NOT LESS THAN ONE PER COUNTY

AUTHORITY: **BOOK OF THE STATES 1962-63**

Alabama	New Mexico
Arkansas	New York
Hawaii	North Carolina
Idaho	North Dakota
Iowa	Ohio
Kansas	Pennsylvania
Mississippi	South Carolina
Missouri	Utah
Montana	West Virginia
New Jersey	Wyoming

APPENDIX No. 4.

COMPARISON: HOUSE APPORTIONMENT UNDER PROVISIONS OF ACT No. 91; METHOD OF EQUAL PROPORTIONS; AND METHOD OF SMALLEST DIVISORS

County	Crawford-Webb Act, Act 91	SDM	EPM
Jefferson	12	14	17
Mobile	6	7	8
Montgomery	4	4	4
Calhoun	3	3	3
Etowah	3	3	3
Madison	3	3	3
Tuscaloosa	3	3	3
Baldwin	2	2	1
Colbert	2	1	1
Cullman	2	1	1
Dallas	2	2	2
Houston	2	2	1
Lauderdale	2	2	2
Lee	2	2	1
Marshall	2	2	1
Morgan	2	2	2
Russell	2	1	1
Talladega	2	2	2
Walker	2	2	2

Balance of counties one each under all apportionment methods.

APPENDIX No. 5.

TABLE OF TEN INDUSTRIAL COUNTIES SHOWING CITY POPULATION AS PER CENT OF TOTAL COUNTY POPULATION

County	City	Population	Co. Pop.	% Rounded of Total Pop.
Jefferson	Birmingham	340,887	634,864	54%
Mobile	Mobile	202,779	314,301	64%
Montgomery	Montgomery	134,393	169,210	79%
Madison	Huntsville	72,365	117,348	61%
Tuscaloosa	Tuscaloosa	63,370	109,047	58%
Etowah	Gadsden	58,088	96,980	59%
Calhoun			95,878	39%
contiguous	(Oxford	3,603		
	(Anniston	33,657		
		37,260		

(Boundaries extended since census to increase population of Oxford)

Lauderdale			61,622	
Colbert			46,506	
			108,128	
contiguous	(Florence	31,649		
	(Sheffield	13,499		
	(Tuscumbia	8,994		
		54,142		50%
Morgan	Decatur	29,217	60,454	

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1963.

No. 27.

DAVID J. VANN and ROBERT S. VANCE,
Appellants,

vs.

BETTYE FRINK, Secretary of State of the State of Alabama, et al.,
Appellees.

Appeal from the United States District Court for the Middle District of Alabama.

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No. 27.

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vs.

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Appellees.

Appeal from the United States District Court for the Middle District of Alabama.

BRIEF OF APPELLANTS.

OPINIONS BELOW.

This is a cross-appeal by intervening plaintiffs, David J. Vann and Robert S. Vance, from the decree of the United States District Court for the Middle District of Alabama, Northern Division. The decree was entered by the court as a statutory three-judge court on July 25, 1962 (R. 173), pursuant to the court's opinion filed on July 21, 1962 (R. 187). The opinion of the District Court is reported at 208 F. Supp. 431. A preliminary opinion entered on April 14, 1962 (R. 62) is reported at 205 F. Supp. 245.

GROUNDS OF JURISDICTION.

This appeal concerns the failure of the court below to remove the invidious discrimination in the apportionment of the upper house of the Legislature of Alabama. Appellants first seek relief with respect to the Alabama Senate comparable to the substantial relief granted by the District Court with respect to the Alabama House of Representatives. In addition, appellants seek declaratory relief as to the standards to be applied by the Legislature of Alabama in any permanent reapportionment act.

These appellants were intervening plaintiffs in the court below. All parties plaintiff are citizens, taxpayers and voters of the State of Alabama and residents of three of its most populous counties. Defendants are the public and political party officials who, under Alabama law, control and operate the election processes by which members of the State Legislature are selected.

The amended complaint in the District Court sought a declaratory judgment pursuant to Title 28, U. S. C., §§ 2201 and 2202, as well as injunctive relief. Jurisdiction rests on those sections and on Title 42, U. S. C., §§ 1983 and 1988, and Title 28, U. S. C., § 1343 (3). The case was heard by a panel of three judges convened under Title 28, U. S. C., §§ 2281 and 2284. Jurisdiction of this appeal is conferred on this court by Title 28, U. S. C., § 1253.

Following the opinion of the District Court on July 21, 1962, these appellants filed a motion for rehearing and modification of proposed decree on July 25, 1962, by which the court's failure to grant substantial relief with respect to the Alabama Senate as originally prayed by the plaintiffs was again presented to the lower court (R. 168). That motion was denied on July 25, 1962 (R. 172). No-

tice of appeal was filed by these appellants on August 23, 1962 (R. 201). Probable jurisdiction was noted by this court on June 10, 1963.

APPLICABLE CONSTITUTIONAL PROVISIONS.

The following provisions of Section 1 of Amendment XIV to the Constitution of the United States is involved:

> "* * *. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The following provisions from the Constitution of Alabama of 1901, as found in Volume 1 of the Code of Alabama of 1940, are involved in this appeal:

Article IX, § 198:

> "The house of representatives shall consist of not more than one hundred and five members, unless new counties shall be created, in which event each new county shall be entitled to one representative. The members of the house of representatives shall be apportioned by the legislature among the several counties of the state, according to the number of inhabitants in them, respectively, as ascertained by the decennial census of the United States, which apportionment, when made, shall not be subject to alteration until the next session of the legislature after the next decennial census of the United States shall have been taken."

Article IX, § 199:

> "It shall be the duty of the legislature at its first session after the taking of the decennial census of

the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the number of representatives and apportion them among the several counties of the state, according to the number of inhabitants in them, respectively; provided, that each county shall be entitled to at least one representative."

Article IX, § 200:

"It shall be the duty of the legislature at its first session after taking the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the number of senators, and to divide the state into as many senatorial districts as there are senators, which districts shall be as nearly equal to each other in the number of inhabitants as may be, and each shall be entitled to one senator, and no more; and such districts, when formed, shall not be changed until the next apportioning session of the legislature, after the next decennial census of the United States shall have been taken; provided, that counties created after the next preceding apportioning session of the legislature may be attached to senatorial districts. No county shall be divided between two districts, and no district shall be made up of two or more counties not contiguous to each other."

Article XVIII, § 284:

"• • •. Representation in the legislature shall be based upon population, and such basis of representation shall not be changed by constitutional amendments."

QUESTIONS PRESENTED.

I.

Were appellants entitled to have the decree of the court below, insofar as it provisionally reapportioned the Senate of the State of Alabama, substantially comply with the requirements of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States?

II.

Were appellants entitled to a declaration from the court below that, under §§ 200 and 284 of the Constitution of Alabama of 1901 and the Fourteenth Amendment of the Constitution of the United States, the Senate of the State of Alabama must be apportioned so that Senate districts are "as nearly equal to each other in the number of inhabitants as may be"?

III.

In this proceeding, should the provisions of the Constitution of Alabama of 1901, and particularly of §§ 198, 199, 200 and 284 thereof, be applied so as to meet the requirements of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States in the light of the distribution of population within the State of Alabama according to the last federal census?

IV.

Is the Equal Protection Clause of the Federal Constitution violated by apportionment of seats in the Senate of Alabama on other than a substantially proportional populative basis?

STATEMENT OF THE CASE.

This suit was commenced prior to this Court's decision in *Baker v. Carr*, 369 U. S. 186, and was continued by the District Court pending the outcome of that case. The amended complaints of the plaintiffs and intervening plaintiffs, charged, *inter alia*, that the Alabama legislature's failure to reapportion itself throughout the entire sixty-one year period since the adoption of the 1901 Constitution had worked to deny them the equal protection of the law required by the Fourteenth Amendment. The complaints sought a declaratory judgment and such injunctive relief as would effect the apportionment of the legislature in conformity with the equal protection requirements. On April 14, 1962, the District Court rendered an opinion on an application for interlocutory injunction in which it noted that plaintiffs had standing to sue, and that they had a justiciable cause of action with respect to which effective relief should be granted prior to the November, 1962 general elections (R. 62). The hearing was continued until July 16, 1962, to give the Alabama Legislature ample opportunity to reapportion itself and thereby avoid the need for further court action.

An extraordinary session of the State Legislature was called and on July 12 and 13, 1962, two reapportionment plans were adopted. Neither plan was to take effect until 1966. One was a proposed constitutional amendment (known as the "67-Senator Amendment") (R. 157) and the other, a reapportionment act (known as the "Crawford-Webb Act") (R. 160) to be effective in the event of the failure of the amendment to win popular ratification.

Citizens petitioned the Legislature for a constitutional bill. Appellants petitioned the Governor seeking from him an Executive Amendment to the Crawford-Webb Act. All

such efforts failed. Neither plan purported to base representation in both houses on a population basis.

The proposed 67-Senator Amendment would have completely removed population as a factor in the Senate and awarded one senator to each county regardless of population. In the 106-member lower house,[1] each county was also given one member regardless of population as provided for by § 198 of the Alabama Constitution; the 39 remaining seats were assigned on the basis of population under the method of equal proportions.

The Crawford-Webb Act was a minimum-change measure which merely transferred a few seats in the lower house from the most over-populated to the most under-populated counties and which redrew new senate districts around the nominees of the May, 1962 Democratic Primary so as to retain the seats of 34 of the 35 nominees. This act did not purport to meet any population standard in either house. Its principal sponsor, Senator Webb, represented in argument before the District Court that it was the best measure which could possibly be enacted by the Alabama Legislature as then apportioned.

Apparently contemplating that neither measure would pass the constitutional test in the proceedings below, already set for hearing, the Legislature also adopted an act providing for special primary elections in the event of court-ordered reapportionment (House Bill 130, Special Session 1962, approved July 23, 1962; Acts of Alabama, 1962 Special Session, p. 226).

Under the Alabama Constitution, the duty of reapportionment following each decennial census is placed on the Legislature itself (§§ 199 and 200). Alabama courts have

[1] An additional county, Houston, had been created in 1903. By operation of § 198 of the Alabama Constitution of 1901 the total membership of the Alabama House of Representatives was thereby increased to 106.

held that other branches of Government are powerless to compel reapportionment as required by the State Constitution in the event of the Legislature's failure to act (*Waid v. Pool*, 225 Ala. 441, 51 So. 2d 869). The Constitution contains no provisions for public initiative with respect either to reapportionment or Constitutional amendment.

Since the adoption of the 1901 Constitution and the apportionment of the legislature as therein provided, there has been a marked population shift within the state (see: Appendices D and E to the opinion of the District Court, R. 163-166). The result is an exaggerated concentration of power in the citizens of some small counties and corresponding under-representation of the citizens of the larger counties. The 1960 census shows that prior to the decree below, control of the Alabama House of Representatives rested with a minimum of 25.7% of the people of the State and that the Senate was controlled by 25.1% (**Compendium on Legislative Reapportionment**, Second Edition, National Municipal League, page iii). Jefferson County, the most populous county in the state, has almost 20% of the state's population but had only 6.6% of the representation in the lower house of the Legislature and only 2.9% of the representation of the Senate.

At its hearing on July 16, 1962, immediately after the close of the Extraordinary Session of the Alabama Legislature, the lower court had before it a motion for interlocutory injunction and a motion for summary judgment (R. 63, 82). All sworn pleadings and affidavits of plaintiffs and interveners, as well as oral testimony and exhibits, were received into evidence (R. 131-135). The issues submitted included the merits of the amended complaints and the validity of the two measures adopted less than a week previously by the Alabama Legislature (R. 144).

In its opinion of July 21, 1962, the District Court noted that all parties had generally conceded that the existing apportionment of both houses of the Alabama Legislature constituted invidious discrimination in violation of the Fourteenth Amendment. It so held. It likewise held that the Senate plan of the proposed 67-Senator Amendment and the plan for both upper and lower houses of the Legislature as contained in the Crawford-Webb Act were unconstitutionally discriminatory, arbitrary and irrational (R. 151, 154).

Having so found, the court applied the remedy of provisional reapportionment, which had been prayed by these appellants (R. 59, 71). However, it rejected all suggested plans for substantial Senate reapportionment (R. 74, 128) and adopted as its own plan a combination of the equal proportions lower house apportionment, sponsored by the plaintiffs and incorporated in the 67-Senator Amendment, and the Senate plan as contained in the Crawford-Webb Act, which the court's opinion had just declared to be invidiously discriminatory. In practical effect, the lower court's order resulted in the shift of only one Senate seat from one over-represented district, consisting of Lowndes County, to another newly-created and under-populated district, consisting of Blount and St. Clair Counties.[2]

The District Court held that this plan, which was ordered into effect in the November, 1962 general election, would not suffice as permanent reapportionment, but expressed a hope that it might prove sufficient to release

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[2] The changes under the court's provisional plan might, at first glance, appear more extensive. But the Crawford-Webb senatorial districts had been carefully drawn around the nominees of the 1962 Democratic primary. Thirty-three Crawford-Webb districts contained only one senate nominee. Only one district contained no senate nominee with a selection necessary under the companion Special Primary Act. One district contained two senate nominees, between whom the Special Primary Act provided for a run-off with new candidates prohibited.

the existing stranglehold then held in the Legislature by a small-county minority. The court refrained from spelling out specific Constitutional standards to be applied under permanent reapportionment. It retained jurisdiction until the legislature, as provisionally reapportioned, shall have had an opportunity to enact its own permanent reapportionment plan.

The relief in the House of Representatives was substantial. Previously, representatives of counties having 25.7% of the population could control the lower house. Under the method of equal proportions, while minority control still obtains because of the rule granting each county one representative regardless of population, control requires agreement of representatives of at least 43.8% of the people.[3] But the Senate, which under the Alabama Constitution is required to be apportioned on a pure population basis, control by senators representing 25.1% of Alabama's people is replaced by control by representatives of a mere 27.6% of the people. The court expressly refused to provide majority control in even one house of the Legislature under its provisional reapportionment order. It permitted an apportionment plan for the Senate which contains ratios of discrimination as large as 20-to-1 against citizens of Jefferson County, 10-to-1 against citizens of Mobile County, 5-to-1 against citizens of Montgomery County, ratios of over 3-to-1 against residents of 11

[3] Even this fairest plan for House apportionment, with retention of the one-representative-per-county rule, contains discrimination ratios (when comparison is made with the most over-represented county) of 5-to-1 against the people of Houston, Lee, Baldwin and Marshall Counties; 4-to-1 against residents of Jefferson, Mobile, Montgomery and Russell Counties; 3-to-1 against Calhoun, Dallas, Etowah, Tuscaloosa, Lauderdale, Morgan, Talladega, Walker, Chambers, Coffee, Covington, Dale, Elmore, Escambia, Jackson, Limestone, Macon, Marengo, Shelby and Tallapoosa; and ratios of 2-to-1 against fourteen other counties. In other words, even under the method of equal proportions, the residents of 45 of Alabama's 67 counties are discriminated against by a ratio of more than 2-to-1 in the House of Representatives.

counties, and over 2-to-1 against citizens of 21 other counties.

To date, the hope of the District Court that it might conceivably by its "slight improvement" break the stranglehold of the Legislature has proved to be an utterly futile dream. At the time of this writing, the Legislature of Alabama is in the closing days of its regular biannual session and there is a virtual certainty that no reapportionment measure will even come up for consideration in both houses. Thus far, no reapportionment measure has passed either house of the legislature and the only legislative accomplishment touching on the subject is found in the lower house's approval of a resolution seeking a constitutional amendment to bar future federal court "interference" in reapportionment cases[4] and that house's approval of a proposed amendment[5] to the Constitution of Alabama which will, if adopted, delete the last sentence of § 284 requiring that representation be on the basis of population. The latter measure was sponsored by the speaker of the House and the House floor leader, the two principal leaders of the present Wallace administration. The floor leader, Hon. Rankin Fite, who is also one of the attorneys for Appellees, Reynolds et al., explained that the measure "is pretty vital to us. If we don't strike it out, the Federal Courts will reapportion the Senate" (Birmingham Post-Herald, Saturday, July 31, 1963, page 1).

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[4] H. J. R. 62, sponsored by several administration leaders, memorializes Congress to call a convention for the purpose of proposing a Constitutional amendment which provides in part:

"Section 1. No provision of this Constitution, or any amendment thereto, shall restrict or limit any state in the apportionment of representation in its legislature.

"Section 2. The judicial power of the United States shall not extend to any suit in law or equity, or to any controversy, relating to apportionment of representation in a state legislature."

[5] H. J. R. 93.

SUMMARY OF THE ARGUMENT.

The court below assumed jurisdiction of this case on the ground that existing legislative apportionment in Alabama discriminated so egregiously as to offend the Federal Constitution. In fashioning its provisional reapportionment remedy, the court below should have applied the State Constitution insofar as its provisions did not violate the Federal Constitution.

The Alabama Constitution of 1901 provides a plan of legislative apportionment which, if applied, would comport to Fourteenth-Amendment requirements: the Senate is apportioned on a pure-population basis; the House of Representatives is apportioned with one representative for each county regardless of population and with additional members assigned to the larger counties on a population basis in such a manner, under present population distribution, as to avoid invidious discrimination.

With respect to the Alabama Senate, the court below adopted a provisional plan which affords no semblance of compliance with any Constitutional requirement. The plan perpetuated in office all save one of the senators nominated in May, 1962 under 1901 apportionment, which was declared in the same proceeding to result in invidious discrimination. The plan adopted was itself declared constitutionally offensive by the same court in the same decree. Constitutionally acceptable plans, equally feasible in their execution, were rejected by the court in favor of an apportionment which, by court decree, results in a gross denial of equal protection to United States citizens.

Appellants contend that the citizens of Alabama are entitled to equal representation in their State Senate. By this appeal, appellants seek such representation.

ARGUMENT.

I.

The District Court Declined to Relieve the People of Alabama From Minority Control of Their State Senate.

The simple proposition presented by this appeal is: were the people of Alabama entitled to relief in the court below which would effectively eliminate egregious malapportionment in the upper house of their State Legislature?

Appellants' rights under the Fourteenth Amendment had long been violated by the inaction of legislators. The seats in the Legislature were so rivited to their respective constituencies that true reapportionment by legislative action had become impossible. The plaintiffs sought relief in the federal court because the Alabama Supreme Court had held that state courts were powerless to afford relief, and because no means of popular initiative was available. The District Court recognized that, if properly applied, the Alabama Constitution of 1901 would afford the federally guaranteed equal protection. Full compliance with these Alabama standards was the objective of this litigation.

The District Court declined declaratory relief to establish definitive standards for Senate apportionment. Appellants contend that the lower court fell into fundamental error when it accepted, on even a provisional basis, the Senate apportionment as set out in the Crawford-Webb Act. The Court explained its action as follows:

> "The only alternatives, however, which have been suggested or which appear to be subject to approval

by the application of mathematical or judicial as distinguished from political standards, would result in very drastic reapportionment, and would probably place nine counties having over half the population of the State in control of the Senate" (R. 155).

In concluding that Senate apportionment based on the equal protection of equal representation was more "drastic" than the equal protection afforded by the Fourteenth Amendment, we respectfully suggest that the District Court seriously failed in its duty to the people of Alabama as United States citizens.

II.

The Alabama Constitution of 1901 Requires Senate Apportionment on a Strict Population Basis.

The court below recognized that having properly taken jurisdiction in this case under the federal constitution, it was required to give application not only to federal constitutional standards, but also to the admittedly valid standards of the Alabama Constitution. *Louisville & Nashville Railroad Co. v. Garrett*, 231 U. S. 298; *Wofford Oil Co. v. Smith*, 263 F. 396 (R. 146).

The Alabama Constitution of 1901 provides that "representation in the legislature shall be based upon population" and, with particular reference to Senate districts, provides that the same "shall be as nearly equal to each other in the number of inhabitants as may be." Such proportionate representation would require the division of each of the more populous counties into more than one Senate district. Such division of counties into Senate districts was challenged in the court below by reason of the last sentence of § 200, which provides: "No county shall be divided between two districts, and no district

shall be made up of two or more counties not contiguous to each other."

This prohibition against dividing a county is an anti-gerrymandering provision which has been brought down in one form or another through each of the successive Alabama Constitutions. In the original Constitution of 1819, the provision read in pertinent part:

> "When a senatorial district shall be composed of two or more counties, * * * no county shall be divided in forming a district."[6]

Successive Constitutional provisions provide no basis for any assumption that the provision as it now appears in the Constitution of 1901 was modified intentionally. Appellants contend that the present language should be construed as an obvious restatement of the Constitution of 1819.

Given effect as an anti-gerrymandering provision, i. e., a prohibition against the fragmentation of counties into pieces to be added to and dominated by other counties in the formation of Senate districts, the last sentence of § 200 is a rational and reasonable provision in harmony with the remaining provisions of the Constitution of 1901.[7]

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[6] As reprinted in the Code of 1852, the last half of this provision was preceded by a semi-colon. Examination of the original, enrolled and executed copy of the Constitution of 1819, now deposited in the archives of Alabama, shows, however, that this semi-colon is a typographical error and that the phrase was originally preceded by a comma, thereby eliminating any reasonable doubt that the first phrase of the section, "when a senatorial district shall be composed of two or more counties" modifies both primary clauses of the provision. This fact was made known to the court below in argument and stood without dispute.

[7] Before Alabama's admission to statehood and while it was still part of the Mississippi territory, it was made subject to that part of the requirements of the Northwest Ordinance adopted by

Distorted into a prohibition against the division of a single county "into" more than one senatorial district to provide for near-true population apportionment, the provision is in diametric conflict with the population-apportionment mandate of the remaining portions of § 200 and of the companion provision in § 284, which the court below found to be the controlling or dominant provision of the Alabama Constitution. Settled rules of construction require that, if possible, consistent meaning shall be given to every part of § 200. *Brooks v. Mobile*, 31 Ala. 227; *Ex parte Wilson*, 269 Ala. 263, 112 So. 2d 443. Moreover, if it can reasonably be done, a construction should be placed upon this provision which would avoid the necessity of this Court holding it to be unconstitutional under the "overriding requirement of equal protection of the laws provided by the Federal Constitution," as the court below recognized it would be required to do (R. 155).

III.

Acceptable Plans of Provisional Senate Apportionment Were Presented to the District Court.

As appellants urged in the court below, under the Alabama Constitution, there is one and only one correct ap-

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the United States in Congress assembled on July 13, 1787, 1 Stat. 51, which provided:

> "Article 2. The inhabitants of said territory shall always be entitled to the benefits * * * of a *proportionate representation of the people in the legislature*". (Emphasis added).

This policy was carried forward into the first Constitution of the State in 1819 where, in Article III, § 10, it was provided that Senate districts should be:

> "* * * as nearly, equal, in the number of white inhabitants as may be * * *."

Except for the deletion of the word "white", this requirement has been carried forward in substantially identical form through the Constitutions of 1865, 1868, 1875, and into the present Constitution of 1901, where it appears in § 200. By no constitutional provision have the people of Alabama ever divested themselves of their right to equal, proportionate representation.

portionment of an Alabama Senate of 35 senators so that all senatorial districts are "as nearly equal to each other in the number of inhabitants as may be."[8] This most nearly perfect apportionment (R. 128) was proposed to the District Court as one of two alternative provisional plans of reapportionment. Under this "most nearly perfect" plan the most under-represented county would be Madison County, with a 1960 census population of 117,348. The most over-represented county would be Montgomery County, with two senate districts, each containing about 84,605 inhabitants. Under the proposal made, 25 of the 35 proposed Senate districts would be within 5,000 of the theoretically perfect district of 93,335.

The appellants proposed as a second alternative a temporary plan of provisional Senate apportionment (R. 74). In its preliminary opinion of April 14, 1962, the District Court had indicated an intention to follow the suggestion of Mr. Justice Clark in his concurring opinion in *Baker v. Carr*, that judicial reapportionment should merely break the "stranglehold" held on a malapportioned legislature. The alternative proposal accordingly provided a minimum of change but still provided approximately equal representation. This plan was built around the then existing senatorial districts. It retained 17 of those districts, merged 18 of the districts to form 9 provisional districts, and assigned 9 new seats to counties then most egregiously under-represented. Although this method commended itself because of its ease of execution in the 1962 general election, it still resulted in reasonably fair apportionment with the most under-represented district having 122,368 inhabitants and the most over-represented district having 76,564 inhabitants. By this alternative plan, there-

[8] Under the Alabama Constitution of 1901, §§ 50, 197, the present Senate of 35 members is the maximum permissible size. Under these provisions the Legislature could, however, reduce the size of the Senate.

fore, it was then possible for the court, while still carrying out its expressed intention, to reduce the factor of discrimination from 40-to-1 to a point where the ratio was substantially less than 2-to-1.

IV.

The Provisional Senate Apportionment Adopted by the District Court Perpetuates Invidious Discrimination.

The court rejected both Senate proposals of the appellants in favor of the Crawford-Webb plan. As a practical matter this plan afforded the appellants none of the Senate relief requested. The discriminatory variations in the court's plan are quickly apparent (R. 129). Representatives of a majority of the people are not only powerless to achieve permanent legislative reapportionment, they do not even have enough votes in the Alabama Senate to prevent the further dilution of their legislative representation by the creation of additional counties (12) or to defeat constitutional amendments (15).

No logical basis exists for the allocation of Senate seats in the manner which was selected by the Crawford-Webb drafters. In toto, the plan can be characterized readily as a "crazy quilt without rational basis." A parade of statistical horribles could be computed by Appellants to describe this plan. The District Court itself analyzed the Crawford-Webb senate as follows:

> "* * * this piece of legislation keeps the control of the Alabama Senate in 27.6% of the people of the State of Alabama. This represents an improvement of only 2.6% over the present control of 25.1%. The vote of a citizen of the Bibb and Perry senatorial districts would be worth twenty times that of a citizen in the Jefferson senatorial district. The vote of a citizen in the 6 smallest senatorial districts would be

worth fifteen or more times that of a citizen in the Jefferson senatorial district. In 22 districts, a citizen would have eight or more times as much representation as a citizen residing in the Jefferson district. Other isolated variations are: Lauderdale (population 61,622) is given one-half a senator by being placed with Limestone (population 36,513), making a district of over 98,000 people. This is opposed to Pickens (population 21,882) and Lamar (population 14,271), having one-half a senator each, with a total population of 36,153. To aggravate this, Colbert (population 46,506), Franklin (population 21,988) and Marion (population 21,837), having a total population of over 90,000, are given one-third a senator, while Henry (population 15,286), Hale (population 19,537), Bibb (population 14,357), Perry (population 17,358), Bullock (population 13,462), Lowndes (population 15,417), Marengo (population 27,098) and Sumter (population 20,041), all in the Black Belt area, are each placed in two-county senatorial districts and thereby given one-half a senator" (R. 151-152).

Moreover, when the court called the Crawford-Webb senate a "slight improvement" it failed to recognize, as appellants pointed out in motion for rehearing (R. 168), that virtually all of its meager surface improvements were effectively circumvented by operation of the Special Primary Act. The net result was the transfer of only one Senate seat (see note 2, supra). And yet this plan was the very one which the court adopted as the only "relief" afforded to the people of Alabama in the apportionment of their Senate.

It is the conviction of these appellants that the sense of the Fourteenth Amendment was correctly stated by Mr. Justice Black in his dissenting opinion in *Colegrove v. Green*, 328 U. S. 549, when he said:

"* * * the constitutionally guaranteed right to vote and the right to have one's vote counted clearly imply the policy that state election systems, no matter what their form, should be designed to give approximately equal weight to each vote cast."

The controlling thought on which this principle is based was well stated by the Kentucky Supreme Court over fifty years ago in *Ragland v. Anderson*, 125 Ky. 141, 100 S. W. 865:

"Equality of representation is a vital principle of democracy. In proportion as this is denied or withheld, the government becomes oligarchical or monarchical. Without equality Republican institutions are impossible. Inequality of representation is a tyranny to which no people worthy of freedom will tamely submit. To say that a man in Spencer County shall have seven times as much influence in the government of the state as a man in Ohio, Butler, or Edmonson, is to say that six men out of every seven in those counties are not represented in the government at all. They are required to submit to taxation without representation. It was this kind of oppression which inspired that great struggle for freedom which began on Lexington Green in 1775, and ended at Yorktown in 1781. Equality of representation is the basis of patriotism. No citizen will, or ought to, love the state which oppresses him; and that citizen is arbitrarily oppressed who is denied equality of representation with every other citizen of the commonwealth."

Even laying aside this 19th century concept of absolute equality, the court-ordered provisional plan of reapportionment fails by any reasonable Constitutional standard. In truth, the sole basis of the Crawford-Webb senate was maximum perpetuation of incumbents in office. The picture as a whole clearly reveals incommensurables of both

magnitude and frequency which, on their face, present invidious discrimination.

The devaluation of the vote of Jefferson County residents in the State Senate remains roughly comparable to that which existed in *Baker v. Carr*, 369 U. S. 186, prior to litigation. In neither of the other cases which have been before this Court, *W. M. C. A., Inc. et al. v. Simon*, 370 U. S. 190, and *Scholle v. Hare*, 369 U. S. 429, did the degree of discrimination prior to litigation even begin to approach this 20-to-1 ratio. It is, therefore, clear that if the District Court's plan of reapportionment had existed in Alabama prior to this time, judicial intervention to provide relief similar to that now prayed with respect to the Senate would have been necessary.

V.

The Lower Court's Decree Provides No Reasonable Hope for a Permanent Solution by Legislative Act.

The concept of a provisional remedy rests on the premise that it will make possible the formulation of a permanent solution affording every citizen the equal protection guaranteed by the Fourteenth Amendment. But the formulation of a permanent solution within the Alabama legislature requires concurrence of both houses. The practical political effect of the District Court's decision is, in this respect, nil. The appellants and all similarly-situated residents of Alabama are put adrift on the same turbulent seas where their Constitutional rights to equal and fair representation have been washed away for over 62 years. The decision of the District Court provides neither chart nor compass nor sail.

The hope that the Alabama Senate as now constituted will agree to a constitutional reapportionment plan and remove a substantial number of incumbents from office is

as futile now as it has been within the last six decades. In April of 1962 this opportunity was given by the District Court to the Alabama legislature. By the admission of its sponsor, the Crawford-Webb plan stands as the best possible solution that could be produced even in the face of certain federal court action. This plan, as adopted by the District Court, resulted in the transfer of only one Senate seat from one over-represented district to another newly-created and over-represented Senate district. It is contrary to reason to indulge in any wistful dream that the stranglehold has been broken.

The District Court's decree with respect to the Senate was not only sterile in its ineffectiveness, but it also included a built-in offense to the rights of the majority with respect to permanent reapportionment. Control over permanent reapportionment by the legislature is placed in the hands of representatives of a minority. The twenty percent of the citizens of Alabama who happen to reside in Jefferson County are entitled to a substantially equal voice and vote in the legislative formulation of permanent reapportionment—not the 2.9% voice which they retain under the decree of the District Court.

Appellants did not ask that the District Court resolve itself into a political forum. Rather, we undertook to show that compliance with the clear requirements of the Alabama Constitution would effect compliance with the Fourteenth Amendment.

Appellants recognize that federal courts will not assume jurisdiction because of mere violations of state statutory or constitutional requirements. Having assumed jurisdiction on the basis of a denial of equal protection of the law, however, the District Court should act within the framework of the Alabama Constitution, if in doing so it could meet Fourteenth Amendment standards. This the court refused to do.

Appellants had previously been deprived of their rights by arbitrary and capricious inaction of their legislature. They are now equally deprived of those rights by court decree.

VI.

An Effective and Workable Judicial Remedy Was and Is Available.

The final paragraph of the opinion of the Court in *Baker v. Carr* indicated confidence that the relief to be afforded appellants could be fashioned in the light of well-known principles of equity. The application of judicial orders to effect reapportionment is not novel.[9] The plan offered by these appellants for a provisional reapportionment effected by injunctive orders was a practical solution within the framework of recognized principles of equity. The proof of its feasibility lies in the manifest ease with which the reapportionment order was carried into effect in Alabama in the general election of 1962. Nor would any substantial problems have been presented if that order had complied with Constitutional standards as prayed.

Similarly, the fulfillment of appellants' remedy by this Court presents no substantial difficulty at this time. A declaration of appellants' right to proportional Senate representation, followed by appropriate injunctive orders abolishing certain of the present Senate districts and declaring vacancies in newly-created seats can be carried into effect under existing Alabama law. Special election machinery to fill these vacancies, with no material disrup-

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[9] Courts have had little difficulty in fashioning orders to provide reapportionment remedies. See, e. g., *State v. Cunningham*, 81 Wis. 440, 51 N. W. 724; *Board of Supervisors v. Blacker*, 92 Mich. 638, 52 N. W. 951; *Giddings v. Sec. of State*, 92 Mich. 1, 52 N. W. 944; *Shaw v. Adkins*, 202 Ark. 856, 153 S. W. 2d 415; *Baird v. Board of Supervisors*, 138 N. Y. 95, 33 N. E. 827.

tion in the processes of State government, is already in existence. Alabama Constitution of 1901, Amendment 97; Code of Alabama of 1940, Title 17, §§ 215-221.

CONCLUSION.

In the dissenting opinion of Justice Black of the Michigan Supreme Court in that court's original consideration of the case of *Scholle v. Hare*, it was aptly stated (104 N. W. 2d, at 105):

> "It is a somber and frightening thing to take away from the people in a democracy their right to an equal vote. We rob them at one stroke of their sword and their shield. We render them powerless. We invite their exploitation. We insure the perpetuations in the body politic of the most malignant growth. We breed cynicism and contempt for the processes of government. The sorry catalog of abuses of minority rule, here shown in small part, amply demonstrate a government by only part of the people, is both pernicious and destructive. The yoke must be responsive to the need to those on whose neck it rests. Every recourse at our command should be devoted to the protection of the guaranteed right of the free and equal balance."

The District Court put into effect a plan of Senate apportionment in Alabama which it had no hesitancy in itself condemning as constitutionally invalid. "Pernicious and destructive" minority rule has now been imposed on the people of Alabama in the name of the United States Constitution by a United States District Court.

The court below adopted as a constitutionally satisfactory **permanent** plan of reapportionment, the allocation of lower house seats in accordance with the State Constitution—an allocation which assigns almost two-thirds of

such seats to arbitrary political units irrespective of population. Appellants submit that the lower house allocation exhausts such latitude as may exist for non-populative apportionment.

Under both the Fourteenth Amendment and the Constitution of Alabama, the appellants are entitled to an equal voice in their State Senate. Appellants submit that they are now entitled to the declaratory relief sought and to the further relief of injunctive orders from this Court, or from the District Court on remand, placing into immediate effect appellants' proposed plan of Senate apportionment (R. 128), which fully embodies such constitutional standards.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 41

JOHN W. McCONNELL, JR., JOSEPH N. LANGAN, WILLIAM M. WILLIAMS, JR. and GARET VAN ANTWERP,

Appellants-Intervenors,

versus

BETTYE FRINK, Secretary of State of the State of Alabama; B. A. REYNOLDS, Judge of Probate of Dallas County, Alabama; FRANK PEARCE, Judge of Probate of Marion County, Alabama; et al.,

Appellees-Defendants,

M. O. SIMS, et al.,

Appellees-Plaintiffs,

R. E. FARR, et al.,

Appellees-Intervenors,

DAVID J. VANN, et al.,

Appellees-Intervenors.

On Appeal from the United States District Court for the Middle District of Alabama, Northern Division.

BRIEF FOR THE APPELLANTS

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BRIEF FOR THE APPELLANTS

OPINIONS BELOW

The opinion of the District Court (R. 137-156) from which this appeal is taken is reported at 208 F. Supp. 431. An earlier opinion of the same Court in the same proceeding (R. 62-65) is reported at 205 F. Supp. 245.

JURISDICTION

The decree of the three judge district court was entered on July 25, 1962. The notice of appeal (cross appeal) of Appellants (R. 204) was filed on September 24, 1962. The order noting probable jurisdiction (R. 206) was entered on June 10, 1963. Jurisdiction of this Court is conferred by 28 U.S.C., §§ 1253 and 2101(b).

QUESTION PRESENTED

The sole question presented by this appeal is whether the Fourteenth Amendment to the United States Constitution requires that each citizen of a State have equal representaiton in the legislative process as a whole, i.e., that representation in both houses of a two-house state legislature be based on a reasonable or rational population basis.

STATUTES INVOLVED

The Civil Rights Act, 17 Stat. L. 13, 42 U.S.C., § 1983 is the Federal Statute involved, and Section 1 of Amendment Fourteen to the Constitution of the United States[1] is that portion of the Federal Constitution involved. Section 50, Article IV, Section 197 through 200, Article IX, and Section 284, Article XVIII of the 1901 Constitution of Alabama[2] are the provisions of the Constitution of that State involved. Sections 1 and 2 of Title 32, Code of Alabama (1940, as amended), are the statutes of that State involved. Each of these Statutes and Constitutional provisions are set out in full in Appendix A hereto.

---

[1] In this brief the Constitution of the United States will be referred to as the "U. S. Constitution."

[2] In this brief the Constitution of Alabama will be referred to as the "1901 Constitution" and earlier constitutions will be referred to in the same manner with the effective date of such constitution. Alabama has had six Constitutions during its history, 1819, 1861, 1865, 1868, 1876 and 1901. See Skinner, *Alabama Constitution Annotated* (1938).

STATEMENT OF THE CASE

This proceeding involves an action for a declaratory judgment and an injunction, arising out of and with respect to the constitutional and statutory provisions for apportionment of representation in both houses of the Alabama Legislature.

The organic law under which the State of Alabama operates is the 1901 Constitution, which provides that the legislative power of the State shall be vested in a legislature consisting of two houses.[3] The house of representatives shall consist of not more than 106 members,[4] and the number of Senators shall be not less than 1/4 nor more than 1/3 of the number of representatives,[5] but with a maximum of 35.[6] The apportionment of the representatives and senators among the several counties of the State of Alabama is provided in the 1901 Constitution itself,[7] but with the constitutional requirement that the number of representatives and senators shall be fixed and apportioned by the legislature among the several counties or districts of the State according to the number of inhabitants in them, respectively, as ascertained by the decennial census of the United States.[8] The Constitution provides that representation in the legislature shall be based upon population and such basis of representation shall not be changed by constitutional amendments.[9] Despite the clear mandate of this Constitution, neither house of the Legislature has been reapportioned since the adoption of the 1901 Constitution. (R. 15)

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[3] Section 44, Article IV, 1901 Constitution.

[4] Sections 50, Article IV, and Section 198, Article IX, 1901 Constitution.

[5] Section 197, Article IX, 1901 Constitution.

[6] Section 50, Article IV, 1901 Constitution.

[7] Sections 202 and 203, Article IX, 1901 Constitution.

[8] Sections 199 and 200, Article IX, 1901 Constitution.

[9] Section 284, Article XVIII, 1901 Constitution.

This proceeding was initiated by the filing of a bill for declaratory judgment on August 12, 1961, which was amended by the Plaintiffs on August 26, 1961. (R. 1) This amended complaint was the one on which the hearing was held and, in general, prayed for the Court (a) to declare certain rights of the Plaintiffs (R. 26-27), (b) to enjoin certain state and political party officials in the State of Alabama from taking certain specified actions (R. 27-32), and (c) to direct that members of the Alabama Legislature in the elections to be held in 1962 be elected on an at-large basis under certain specified conditions. (R. 32)

Answers to the Amended Complaint were filed by certain of the named Defendants. (R. 40, 41, 43) Motions to intervene as party plaintiffs were filed on behalf of certain other parties (R. 44, 59, 67), which motions were granted by various orders of the Court. (R. 47, 65, 76) On March 29, 1962, Plaintiffs filed a motion for a preliminary injunction, enjoining certain of the Defendants from taking certain action with regard to the primary elections to be held in the State of Alabama in May, 1962. (R. 47-50) By order of Court entered on March 30, 1962 (R. 57), a hearing was held on this motion on April 14, 1962. At the conclusion of this hearing, the Court entered an order denying said application and setting out its reasons therefor in a brief opinion. (R. 62) In that opinion the Court (a) deferred action to give the Legislature another opportunity to act, (b) continued the application for injunction and reset the hearing thereon for July 16, 1962, and (c) set out certain preliminary remarks for guidance of counsel.

These Appellants filed their motion for permission to intervene as plaintiffs in this action on June 27, 1962 (R. 67), which motion was granted on July 2, 1962. (R.

76) On July 2, 1962, Plaintiffs filed a motion for summary judgment. (R. 78) On July 13, 1962, Plaintiffs filed a motion for a preliminary injunction to enjoin certain of the Defendants from taking certain action with regard to an election to be held on an amendment to the 1901 Constitution of Alabama, regarding apportionment of the Legislature, proposed in an Act adopted by the Legislature on July 12, 1962. (R. 93)

Between the hearing in April and the hearing on July 16, 1962, the Legislature of Alabama was called into Special Session by the Governor, at which session two Acts relating to reapportionment of its membership were duly adopted. (R. 106-107) The First Act, No. 93, proposed an amendment to the 1901 Constitution, providing for an apportionment of senators and representatives to the Legislature of Alabama. (R. 114, 157-159) The second Act, No. 91, was a stand-by Act to be effective only if the proposed Constitutional Amendment were not ratified by the voters of the State of Alabama. (R. 111-113 and 160-162)

The hearing was held before the three judge Court on July 16, 1962. (R. 130-135) The Court entered its opinion on July 21, 1962 (R. 137) and its decree in accordance therewith on July 25, 1962. (R. 175) In general, the Court (a) held that the then apportionment of both houses of Legislature of Alabama constitutes "invidious discrimination" in violation of the Equal Protection Clause of the Fourteenth Amendment (R. 144), (b) held that Act No. 93 (termed the "67-Senator Amendment") and Act No. 91 (the stand-by legislation and termed the "Crawford-Webb Act"), are obviously discriminatory, arbitrary and irrational, and, therefore, failed to meet the necessary constitutional requirements (R. 146), (c) adopted the provisions of Act No. 93, as to

the House of Representatives (R. 155 and 177), (d) adopted the provisions of Act No. 91 as to the Senate (R. 155 and 178-179), (e) enjoined and directed certain defendant officials to hold elections for members of the Legislature, as set out in the opinion and decree (R. 180), (f) held that the apportionment made by the Court in its decree would remain until altered by the Alabama Legislature in accordance with Constitutional requirements (R. 188), and (h) retained jurisdiction of the cause for the purpose of issuing any and all additional orders that may become necessary and appropriate in the judgment of the Court. (R. 190)

SUMMARY OF ARGUMENT

The Court below erred in failing to apportion, or to set out guide lines for the Legislature to follow in apportioning, both houses of the Legislature of Alabama, according to the Constitutional standard or norm of population.

By the very nature of representative government, equality of representation of the individual citizen in the legislative process is basic to the fundamental constitutional concept of due process and equal protection of the laws. Prior to the evolution of representative government, the individual citizen participated directly in the functions of government and, as such, his vote and voice in governmental affairs was equal to that of other citizens. It was not the intention of the citizen, in establishing representative government by a written constitution or compact, to give up this equality of voice in his government. Such equality must not only obtain in the process of selecting representative, but, through equality of the representative, in the legislative process itself. This is part and parcel not only of representative government but of the democratic principle of rule by the majority.

The concept of equality of representation of each citizen has been a touchstone of the political and legal philosophy since the inception of this nation, beginning with the Declaration of Independence and The Northwest Ordinance, adopted by the Congress under the Articles of Confederation, both anti-dating the Federal Constitution. Such concept has also been part and parcel of each of the Constitutions under which the State of Alabama has operated since its admission into the Union in 1819.

Alabama is governed by the 1901 Constitution, which not only provided for the initial apportionment of representation in the two houses of the State Legislature, but required reapportionment of both houses after each Federal decennial census. However, aside from certain constitutional amendments proposed from time to time, no Act to reapportion itself was adopted by the Legislature of Alabama until its Special Session in 1962. The basic theme of that Constitution, with regard to apportionment of the Legislature, is that it shall be based on population. However, there are certain detailed provisions in the Constitution that might conflict with and dilute this right of equal representation in the legislative process. This the lower Court recognized, but did not rule upon, and followed in its reapportionment plan.

The rights which Plaintiffs claim to have been infringed are individual rights, and not the rights of any minority group or of any geographical area or of any classification of citizens. Although the Court has recognized that states may place certain qualifications on the suffrage right of its citizens, so long as such classification is reasonably related to that right, it does not allow any discrimination in the exercise of the right, once it has been granted. This follows whether the discrimination be because of race, color or sex or because of improper use of a qualification otherwise constitutionally

proper. Not only is the right of suffrage protected in preliminary requirements, primary elections and the equality of the ballot in the election itself, but also in the equality of the effect of that ballot in determining the results of the election. The equality of the vote may not be diluted by discriminatory districting or by any system of weighting. The concept of one person, one vote, is basic and permits no deviation nor dilution.

At issue is not only the constitutional principle of equal protection of the laws, but equality in the making of these laws. Minorities may be protected and the political initiative may be properly diffused throughout the political system by means other than minority control of the legislative process. Minority control or process is not due process. Equality of representation means equality in the **entire legislative process** and where that process is delegated to a legislature of two houses, then there must be equality of representation in **each** house.

ARGUMENT

1. *Equality of representation in the legislative process is basic to the fundamental constitutional concepts of due process and equal protection.*

Among the basic political principles under which the United States of America and the States composing that federal union operate are those recognizing the political equality of all persons, that all political power is inherent in the people, and that all free governments are founded on the authority and instituted for the benefit of the people.[10] Such political power encompasses the legislative or law making authority, the executive or administrative authority, and the judicial or the controversy deciding

[10] As examples see Sections 1 and 2 of Article I (Declaration of Rights), 1901 Constitution.

authority. All of these powers, however, are inherent in and founded on the authority of the people.

In classical antiquity, epitomized by Greece in the fifth and fourth centuries, B.C., with its city-states in which the idea of man's innate dignity and worth first crystalized, the small number of citizens and the limited area of the political unit permitted personal and direct participation in the exercise of the powers of government. Greek political leaders, such as Aristotle, deemed this direct personal participation so vital that any organization or political framework larger than the average city-state was opposed and, for that reason, was never found in that particular era.

However, with the tremendous increase in the population and the size of the geographical area comprising the political units in more recent times, such direct participation by the members of the political unit in the day-to-day exercise of the legislative, executive and judicial powers was no longer feasible. Thus arose the idea and the theory of representative government, in which the citizen members of the political unit selected agents or representatives to act for them in the exercise of these political powers. Concomitant with this theory of representation was the idea of the compact or constitution among the people which governed and determined the relations and status of the members of the political unit. This compact or constitution established the political unit, the powers, or limitation on the powers, of the government established by the people to direct the affairs of the political unit, and the method of the selection of the agents or representatives of the people who would exercise the three basic political powers of the political unit.

Inherent in all such compacts or constitutions are the concepts that the powers granted by the people to the

government are limited, that those powers not specifically or necessarily granted are retained by the people, and that the government and the representatives are subject initially to the constitution or compact and ultimately to the people.

Political equality of the citizen was inherent in the direct participation in the affairs of the state by the fact that each citizen had a right to voice his opinion in the deliberations and discussions and to cast a vote, which was equal to the vote of any other citizen, in making decisions. This political equality was continued in the republican or representative form of government by granting each citizen an equal vote in the selection of the representatives to act for and in his behalf and by requiring that each representative represent, as nearly as possible, the same number of citizens.[11]

In banding together in a political society, the politically equal members recognized the rule of the majority in the elective and legislative processes of the government, unless some number greater than a majority was agreed upon in the constitution or compact. Majority rule was necessary in order to determine when and how the actions of the representatives would be made and become binding. The simplicity of this rule is that there can be at any one time and on any one question only one majority; whereas, at the same time and on the same question, there can be any number of minorities, ranging from a minority of one to a minority of one less than one-half of the total.[12]

There is no impartial method of determining which

[11] See *Moss v. Burkhart*, 207 F. Supp. 885, 893 (W.D. Okla., 1962); *Ragland v. Anderson*, 125 Ky. 141, 100 S.W. 865, 869 (1907); *Stiglitz v. Schardien*, 239 Ky. 799, 40 S.W. 2d 315, 321 (1931); *Asbury Park Press, Inc. v. Woolley*, 33 N.J. L. 1, 161 A. 2d 705 (1960).

[12] See John Locke, "An Essay Concerning the True Original, Extent and End of Civil Government," Chap. 95-97.

minority should control or have the determining voice (except in the recognition of plurality whereby the largest minority, where there is no majority, would control). Control by minorities actually derogates from, and is contrary to, the purposes of political union.

Another cogent argument for majority rule is the ever present right of a minority to become a majority by attracting to its side members of the majority by force of persuasion or reason. Majority rule, however, is subject at all times (1) to the limitations on the exercise thereof prescribed in the basic compact or constitution and (2) to certain basic individual rights which no individual, in becoming a member of a political unit, surrenders to the control of such political unit.[13]

The most active and far reaching exercise of governmental power is legislative, the making of rules binding upon the community. Basic in our concept of constitutional government is the idea of a government of law and not of men. If these laws are to represent the views and opinions of, and are to be acceptable to, the general citizenry, then the representatives of the citizens must, as accurately and truly as possible, be responsive to the citizens for whom they act and represent. The enactment of general rules governing a society requires careful study of conflicting and complex viewpoints and usually workable or acceptable compromises. Through argument and discussion, the area of agreement is determined in the representative legislature. This symbolizes the consent which legislation presupposes if it is to be compatible with the ideas of the citizen's autonomy and equality in the governmental unit and of majority rule.

The purpose of a government is to govern, which necessitates action. No government which fails to gov-

[13] See, Locke, *ibid.*, Chap. 131.

ern can possibly be just. A just government is one that weighs and considers the conflicting claims, desires and views of its members and makes a decision and acts in accordance with the concept of the common good. In this process, there is a place for both the majority and the minority, the majority participates through acting and the minority participates through discussion and criticism, with the right ever present for the latter, by the persuasive force of its argument and criticism, to become a part of a majority and thus to reverse the decisions and actions of a previous majority.

Thus, the selection of the representatives represent the very core of popular republican government. Unless the individual citizen can effectively voice his thought, opinion, and will through his duly chosen representative, responsible government is not only impossible, but the idea of a constitutional representative political unit, of a government of law and not of men, is a mere mirage.

The abuse of this basic right and concept by King George III was one of the objections made in the Declaration of Independence. " * * * He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only."[14] The Northwest Ordinance, adopted July 13, 1787, by the Congress under the Articles of Confederation, which not only antedated the Constitution of the United States but was the basis for the government of the territories and the admission of new states into the Union after the adoption of the Constitution, specifically recognized that the inhabitants of the territory would always be entitled to the benefits of a proportionate representation of the people in the Legis-

[14] 1 Stat. 1.

lature.[15] This was made applicable to Alabama by the Act approved May 10, 1800, authorizing the establishment of a government in the Mississippi territory, of which a portion of present day Alabama was a part, in that representatives in the General Assembly of that territory would be apportioned in the manner described in the Northwest Ordinance.[16]. The Act of March 2, 1819, by which Alabama was admitted as a State to the Union, specifically provided that the Constitution and State government shall not be repugnant to the principles of the Northwest Ordinance.[17] Thus, this idea of equality of representation in the lawmaking branch of the government was guaranteed by the provision that the representatives should be apportioned on the basis of the number of inhabitants.[18]

Equality of representation may be said to require either (1) that each representative shall have an equal number of constitutents or (2) that the share of a constituent in one representative shall be equal to that in each representative. Both would be most perfectly satisfied if the representatives were elected from the entire political unit (at large) by all of the members thereof (state officials, such as the governor in Alabama, are in this category). However, this is not always feasible nor desirable. In the absence of the use of such a method, the determination, and the method of determination, of the political unit, geographical or otherwise, from which and by which the representatives will be selected becomes of paramount importance. Certain basic factors may be involved in the determination of such political unit; (1) are the subdivisions to have one or more than one repre-

[15] 1 Stat. 51-53, f.n. (a).
[16] 2 Stat. 69.
[17] 3 Stat. 608.
[18] See 1819 Constitution, §§ 9 and 10, Code of Alabama (1876), pp. 53, 57.

sentative; (2) the size of the unit both in terms of geographical area and of numbers; (3) the community or diversity of interest of the unit and the persons therein; (4) size of the legisaltive or representative body; and (5) the possible burden on the election process (in terms of communication between candidates or representatives and the electors and the cost of elections, both to the candidate and to the State).

In order to minimize the cost of operation and to maximize the deliberative process of the representative body, the size of the representative body must be limited. With the recent increase in population, the number of constitutents in the political subdivision which the representative represents has increased or there has been a demand to increase the number of representatives. However, where the size of the legislative body has remained constant and the increase in the population of the political subdivisions has been disproportionate, a basic conflict arises. The size of the deliberate body, if equality of representation is to be maintained, requires a definite relationship between the number of electors or inhabitants in the smallest political subdivision from which a representative is selected and the total population of all such subdivisions (that is, the population of the smallest subdivision cannot materially vary from the ratio obtained by dividing the total population of all subdivisions by the total number of representatives in its representative body).

Another factor entering into the basic determination of the political subdivision from which representatives will be selected is the determination of who is to be represented by the representative and be counted in determining the number of persons so represented. As seen earlier, the Northwest Ordinance based representation on the

inhabitants in the territory. The initial Constitution of the State of Alabama restricted this, however, to white inhabitants. This continued to be the rule in this State until the Constitution of 1868, which returned the basis to all inhabitants. This is the present basis for apportionment of representatives.

2. *The District Court's Opinion and Decree were inadequate because of certain provisions of the Alabama Constitution.*

The last apportionment of the senators and representatives of the Legislature of Alabama was based on the 1900 federal census and was established by §§ 202 and 203, Article IX, of the 1901 Constitution. There have been six decennial federal enumerations of the population of the State of Alabama since 1900 and there have been numerous regular and special sessions of the Alabama Legislature since 1910. (R. 16) However, aside from several amendments proposed to the Constitution regarding apportionment of the Senate[19] and Act No. 91 (the "Crawford-Webb Act") passed by the Special Session in 1962,[20] there has been no further apportionment of either house of the Legislature.[21] The District Court re-

[19] The first so-called "67-Senator Amendment" was proposed in 1931 and provided for a senate equal in number to the number of counties and apportioned the senators one to each county. This was decisively defeated by the voters (by a better than 4 to 1 vote). In 1951, a similar constitutional amendment was submitted to the voters and again rejected (this time by a vote of almost 3 to 1). In 1956, the same type of amendment, but coupled with an increase in the membership of the house of representatives to make the latter more fairly apportioned, was submitted to the voters, and was also rejected. Act No. 93, adopted at the Special Session in 1962, was the same 67-Senator Amendment.

[20] The only serious effort to provide not only for current reapportionment but automatic reapportionment in the future was made at a Special Session of the Legislature called by Governor Dixon in 1939. This was the first time that a bill on reapportionment had been reported out of committee, but it was defeated in the House, 60 to 31 and thereafter was indefinitely postponed in the Senate.

[21] See Farmer, *The Legislative Process in Alabama*, pp. 9-29, and Larson, *Reapportionment in Alabama*, pp. 9-25.

ferred to the cumulative effect of the initial apportionment in 1901 and the failure to reapportion thereafter in accordance with the changes in the population of the State, as a whole, and of its subdivisions, and attached to its opinion two appendices illustrating these results. (R. 144, 163-167)[22]

The Court quite properly found that the apportionment of the Alabama Legislature, at the time of the hearing, constituted "invidious discrimination" in violation of the Equal Protection Clause of the Fourteenth Amendment (R. 144, 141),[23] and that neither the 67-Senator Amendment[24] nor the Crawford-Webb Act meets the necessary constitutional requirements (R. 146), noting, as it had done in its Opinion rendered on April 14, 1962, that the Justices of the Supreme Court of Alabama, on two different occasions, had taken judicial notice of the changes in population of the various counties of the State since 1901, the failure of the Legislature to apportion its membership as a result of such changes, and the con-

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[22] In 1901, a majority of the senators (18) was elected from districts containing 41% of the State's population. By 1956, a majority was elected from districts containing 31% of the State's population and, by 1960, 25% of the State's population. At the same times, a majority of the House of Representatives was elected from counties containing, respectively, 42%, 25% and 23% of the State's population. That this minority control of the Legislature is localized and is not geographically disbursed is indicated by the fact that of the counties that could elect a majority of both houses in 1960, 25 of those counties were included in the 33 counties making up the 18 senatorial districts of lowest population and were among the 41 counties of lowest population electing a majority (54) of the House of Representatives.

[23] Citing *Baker v. Carr*, 369 US 186, 82 S Ct 691, 7 L ed 2d 663 (1962); *Sanders v. Gray*, 203 F. Supp. 158 (N.D. Ga., 1962); *Toombs v. Fortson*, 205 F. Supp. 248 (N.D. Ga., 1962); *Moss v. Burkhart*, 207 F. Supp. 885 (W.D. Okla., 1962).

[24] Under the 67-Senator Amendment, a majority of that body (34) would be elected from counties having 19.5% of the State's population; whereas, 26 members (a number sufficient to defeat any proposed amendment to the Alabama Constitution) would be elected from counties having 13.4% of the State's population. Thus, in effect, 20% of the population, through their representatives, would control a majority of such a senate and could thus defeat any legislation, and 41% could prevent any proposed amendment to the Constitution.

clusion that apportionment of the Legislature was no longer on a constitutional basis.[25]

The Court, acting reluctantly and with the intent to accept such parts of the two acts adopted by the Legislature that, in the opinion of the Court, would release the stranglehold on the Legislature and permit it to reapportion itself, adopted that portion of the proposed Constitutional Amendment relating to the House of Representatives and that portion of the Crawford-Webb Act relating to the Senate. However, the Court specifically held that this did not meet the standards of constitutionality required of, and would not suffice for, a permanent reapportionment. (R. 155-6)

The Court quite properly found, in its opinion on April 14, 1962 (R. 62, 64), and repeated in its opinion on July 21, 1962 (R. 142, 149), that the controlling constitutional formula which runs throughout the Constitution of Alabama is expressed in the last sentence of § 284 of the 1901 Constitution, to the effect that "Representation in the legislature shall be based upon population" and that if that formula is met, there can be no valid objection under the Equal Protection Clause, or any other part of the U. S. Constitution. However, at the same time, the Court recognized that this clear-cut provision might be diluted by other and somewhat conflicting requirements of the same Constitution. (R. 149)

However, the Opinion and Decree of the District Court are as important for what they did not say, as for what they did say, and for the failure to grant the relief prayed for by Appellants and, particularly, the declaration that, basing representation in either the House of Representatives or the Senate of the Legislature of

[25] *Opinion of the Justices*, 254 Ala. 183, 47 So. 2d 713, 717 (1950); and *Opinion of the Justices*, 263 Ala. 158, 81 So. 2d 881, 887 (1955).

Alabama on any factor other than population would violate the provisions of the Fourteenth Amendment of the U. S. Constitution. (R. 85) Recognizing that its provisional reapportionment did not meet constitutional standards and would not be satisfactory as permanent reapportionment, the Court did not determine (a) what the constitutional norm for apportionment of a bicameral legislature is, (b) that, if this norm is population, does it apply to both houses of a two-house legislature, (c) what deviation from such norm, if any, there may be, and, if there may be deviation, to what extent and how may such deviation be measured, and (d) that, if the norm is population, may this be changed by the citizens of the State and, if so, under what circumstances and to what extent.

The concern of the Appellants over these omissions from the Opinion and Decree of the Court and the basis for their appeal therefrom arises from a study of the provisions of the Alabama Constitution relative to reapportionment. Although the Federal Courts are always reluctant to interpret the laws and constitution of a state, particularly where the highest court of such state has made no interpretation of the provisions in question,[26] where the Court has jurisdiction of the matter, such as the District Court did here under *Baker v. Carr*, *supra*, it also has jurisdiction to interpret the statutory and constitutional provisions in question. *Louisville & Nashville R.R. Co. v. Garrett*, 231 US 298, 34 S Ct 48, 58 L ed 229, 239 (1913). The necessity for such interpretation arises from a dual requirement with regard to any apportionment made by the Alabama Legislature; (1) whether such proposal conforms to the requirements of the 1901 Constitution, and (2) whether the requirements of the 1901

[26] *Railroad Commission v. Pullman Co.*, 312 US 496, 61 S Ct 643, 85 L ed 971 (1941); *Clay v. Sun Insurance Office, Ltd.*, 363 US 207, 80 S Ct 1222, 4 L ed 2d 1170 (1960).

Constitution conform with the standards or norm of the Fourteenth Amendment.

As recognized by the District Court, apportionment by population is the dominant theme throughout the 1901 Constitution and previous Alabama Constitutions. Section 198 (Article IX) of the 1901 Constitution, relative to the House of Representatives,[27] § 200 (Article IX), relative to the Senate,[28] § 39 (Article II), relative to the formation of new counties,[29] and § 284 (Article XVIII),

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[27] "The members of the house of representatives shall be apportioned by the legislature among the several counties of the state *according to the number of inhabitants in them*, respectively, * * * ". See also §§ 8 and 9 (Article III), 1819 Constitution (pp. 56-7), the Third Amendment to the 1819 Constitution (adopted in 1850) (p. 70), § 6 (Article IV), 1865 Constitution (p. 88), § 1 (Article VIII), 1868 Constitution (p. 113), § 2 (Article IX), 1875 Constitution (p. 127) for similar provisions. (All page references are to Code of Alabama (1876).)

[28] "It shall be the duty of the legislature * * * to divide the state into as many senatorial districts as there are senators, which districts *shall be as nearly equal to each other in number of inhabitants as may be*, * * * ". See also § 10 (Article III), 1819 Constitution (p. 56), § 7 (Article IV), 1865 Constitution (p. 92), § 3 (Article VIII), 1868 Constitution (p. 114) and § 4 (Article IX), 1875 Constitution (p. 143) for similar provisions.

[29] " * * * no new county shall be formed unless it shall contain a sufficient number of inhabitants to entitle it to one representative under the ratio of *representation existing at the time of its formation*, and leave the county or counties from which it is taken with the required number of inhabitants to entitle such county or counties, each, to separate representation; * * * ". See also § 16 (Article VI), 1819 Constitution (p. 64), which provided that every new county, as to the right of representation, shall be considered as a part of the county or counties from which it was taken until entitled by numbers to the right of separate representation; § 2 (Article II), 1865 Constitution (p. 91), § 2 (Article II), 1875 Constitution (p. 130) for similar provisions. If the division of the State of Alabama into counties were to be made today, based on the 1960 population and a house of representatives of 106 members, which would give a ratio of representation of 30,607 persons per representative, only 27 of the existing 67 counties could be validly organized into new counties; the remaining 40 counties would have to be joined into combinations to have a sufficient number of inhabitants to meet this ratio of representation. See Amendment CXXXII to the Alabama Constitution adopted in 1957, which provided for the abolition of Macon County by the legislature. This was proposed by the same legislature which by legislative act gerrymandered the City of Tuskegee in the same county and was the subject of the litigation in *Gomillion v. Lightfoot*, 364 US 339, 81 S Ct 125, 5 L ed 2d 110 (1960).

relative to amendment of the Constitution,[30] clearly indicate this dominant theme.

However, despite this emphasis on population as a basis of representation in the Legislature, there are other provisions of the 1901 Constitution that would conflict with or dilute these clear and mandatory provisions. Section 50 of the 1901 Constitution fixes the maximum size of the two houses of the Legislature, the House at 105 plus 1 for each new county formed thereafter, and the Senate at 35.[31] Section 199 provides that the Legislature at its first session after each decennial census shall fix by law the number of representatives, but further provides that each county shall be entitled to at least one

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[30] " * * * Representation in the legislature *shall be based upon population*, * * * ". This section of the Constitution was amended by Amendment XXIV, proclaimed ratified on August 2, 1933, but the above wording was carried over verbatim into the Amendment. It is doubtful if the 1901 Constitution would have been either submitted to the people of Alabama or adopted by them had this specific requirement not been contained in that document. See, *Official Proceedings, Constitutional Convention of 1901, State of Alabama*, Vol. 3, pp. 3906-3924 and the lengthy quotations therefrom in *Opinion of the Justices*, 263 Ala. 158, 81 So. 2d 881 (1955), by four of the Justices, at pp. 886-7 and by three of the Justices at pp. 889-90. One of the dominant issues of the 1901 Constitutional Convention was the question of negro suffrage. The dominant element in the Convention from the Black Belt clearly wished to limit the right of suffrage to the negro. See §§ 177 through 196, Article VIII, 1901 Constitution. At the same time, since the population of this area was predominantly negro, it could not afford to have representation based on the number of voters and insisted that representation be based on the total population. However, the Black Belt was not satisfied with a provision to the effect that representation would be based on population, but there must be a further provision to the effect that this could not be changed by normal constitutional amendments. Both demands were met. *Official Proceedings, Constitutional Convention of 1901, State of Alabama*, Vol 2, pp. 2343 *ff.*, and Vol. 3, pp. 3906 *ff.* See Farmer, *loc. cit.*, pp. 9-29. It is one of the ironies of history that the very section which was so adamant in its demand for representation on the basis of population has, throughout the intervening years, led the fight against implementation of such apportionment on such basis after each decennial census and for amendments providing for apportionment, in at least one house, on a basis other than population. See Comment, "Alabama's Unrepresentative Legislature," 14 Ala. L. Rev. 403 at p. 406 and authorities cited in footnotes.

[31] § 197 provides that the senators shall not be more than ⅓ of the number of representatives, which, if more than three new counties were added to those existing in 1901, could conflict with the specific number set out in § 50.

representative. This provision would allow for the dilution of representation on the basis of population in the House. The Legislature could fix the number of representatives equal to the number of counties, thereby attaining the objective of the several 67-Senator Amendments. However, even if it should fix the number of representatives at the maximum of 106 (one new county having been added since 1901), there remains only 39 representatives, after one is allocated to each of the 67 counties, to account for the disparities of population among the several counties.[32] Couple these requirements with the population trends in the State of Alabama over the last half century and the situation tends to become worse rather than better.[33]

Section 200 of the 1901 Constitution provides that the Legislature, at its first session after each decennial census, shall fix by law the number of senators and shall divide the State into as many senatorial districts as there are senators. However, the same section provides that no county shall be divided **between** two districts. If this latter provision means that no county may be divided **into** two districts, then it will be impossible to apportion the Senate on the basis of population unless the population of the most populous county should be less than the quotient obtained by dividing the total population of the State by the total number of senators in the State.[34]

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[32] With such disparities of population and under the method of equal proportions, the number of persons per representative ranges from 50,718 for Houston County (R. 125) to 10,726 for Coosa County (R. 73), with the average at 30,607 (R. 165).

[33] In 1960, 45 of the 67 counties in Alabama were less populous than in 1950, and 26 were less populous than in 1900. (R. 163-5)

[34] Since the Constitution provides that the number of senators shall not be less than one-fourth of the number of representatives, the most populous county cannot have more than 1/27th of the State's population with a house of 106 members, or 1/17th of the State's population with a House of 67 members. In 1960, the population of three of the counties exceeded such percentage, based on 27 members, and two exceeded such percentage based on 17 members. The population of the two most populous counties represent respectively, 19.6% and 9.7% of the State's population.

3. *The Constitutional standards imposed by the Fourteenth Amendment to the U. S. Constitution require that both houses of a two-house legislature be apportioned in accordance with population.*

It should be noted, and made clear initially, that this is a suit to protect personal rights, those of each Plaintiff and of each citizen of the State of Alabama in whose behalf the action was brought, and is not brought to protect the rights of any minority group, racial, religious or otherwise, nor of any particular area within the State of Alabama, such as urban or rural areas, nor of a particular class of voters or segment of the population. The personal right which Plaintiffs claim have been denied to each of them by the failure of the Alabama legislature to reapportion itself in accordance with the mandate of the laws of that State is the right guaranteed each citizen by the Fourteenth Amendment of equality in the legislative process.[35]

(a) *The right to have one's vote count as equal to that of another is a basic constitutional principle.*

States, are constitutionally permitted, within limits, to establish the qualification of voters or the conditions under which the right of suffrage may be exercised in state and federal elections.[36] However, there must be some rational connection with the qualification and the exercise of the suffrage privilege, such as age, residence, literacy, previous criminal record,[37] and, perhaps, others.

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[35] The Equal Protection Clause relates to equality between persons rather than between areas. *McGowan v. Maryland*, 366 US 420, 81 S Ct 1101, 6 L ed 2d 393, 400 (1961).

[36] *Pope v. Williams*, 193 US 621, 633, 24 S Ct 573, 48 L ed 817, 822 (1904).

[37] *Lassiter v. Northampton County Board of Elections*, 360 US 45, 51, 79 S Ct 985, 3 L ed 2d 1072, 1077 (1959).

However, by reason of the Fifteenth Amendment and Nineteenth Amendment to the U. S. Constitution, States may not deny or abridge the right to vote to negroes or to women, nor can qualifications, otherwise valid, be used as a cloak to discriminate against one class or group of voters.

In protecting the right to vote, the Court will look to the preliminary requirements as well as to the entire election process. Thus, rules and regulations with regard to such preliminary matters as the registration of voters are considered a part of the election process and, if used as a means of discriminating against a class of voters, will be invalidated.[38] The constitutional provisions also extend to the preliminary elections, such as a primary or pre-primary processes.[39]

The right to have one's vote count as equal to another's vote in an election has never been denied or questioned[40] and is a fundamental right essential to the preservation of self government.[40a] However, this protection of the right of suffrage and the value of the ballot does not end with the mere casting of that ballot. In the counting and the effect given to that ballot, the equality of the ballot must continue. If there were any doubt as to this, it was put to rest by the decision in *Gray v. Sanders*, *supra*, declaring invalid the so-called "county unit" system used in Georgia in electing certain state and federal

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[38] *Davis v. Schnell*, 81 F. Supp. 872 (S.D. Ala., 1949), *aff'd per curiam* 366 US 933, 69 S Ct 749, 93 L ed 1093 (1949).

[39] *Smith v. Allwright*, 321 US 649, 64 S Ct 757, 88 L ed 987 (1944); *United States v. Classic*, 313 US 299, 61 S Ct 1031, 85 L ed 1368 (1941); *Terry v. Adams*, 345 US 461, 73 S Ct 809, 97 L ed 1152 (1953).

[40] "Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be in that geographical unit. This is required by the Equal Protection Clause of the Fourteenth Amendment. * * * " *Gray v. Sanders*, 372 US 368, 83 S Ct 801, 9 L ed 2d 821, 830 (1963).

[40a] *Moss v. Burkhart*, 207 F. Supp. 885, 893 (W.D. Okla., 1962).

officials. This prohibition would apply not only to the prohibitions specifically named in the Constitution, such as giving a value to the ballot of a negro or of a woman different from that of other voters,[41] but also to ballots weighted because of the geographical residence of the voters, the occupation of the voter, the income of the voter or similar classifications. The prohibition would equally extend to those classifications which the Court has recognized as valid in determining the right of suffrage, such as literacy, age and similar factors, because once the right to vote is recognized, there can be no weighting or dilution of that right.

(b) ***The right of a citizen to participate in the legislative process of government is as equally fundamental as his right to vote and as such is subject to the same constitutional requirements of equality and prohibition against dilution.***

The voting for and selection of the representatives who will participate directly in the law-making process of a government is the first step in the operation of a representative government. This procedure is made necessary by the geographic size and population of modern governmental units and the number and complexity of today's problems which prevent the direct participation by all citizens in the day-to-day legislative processes. However, just as the citizen would loudly protest against, and the Court would strike as invalid, any system by which the participation of the citizen in the election of such representatives should be by unequal votes,[42] so should the citizen be indignant at, and the court be equally protective of, the dilution or denial of the equality of

[41] *Gray v. Sanders*, *supra*, p. 829.

[42] See Larson, *Reapportionment and the Courts*, cited in fn. 5 to the District Court's Opinion, 208 F. Supp. 431, 436 (R. 145).

such representative elected by one group of voters to that elected by another group in the actual legislative process itself.

Where the representatives are elected from the political unit as a whole, and by all the electors of that political unit, equality of the citizen in the representative and in the lawmaking process follows. However, where the entire political unit is divided into different geographical areas, or different voter groups or classifications, for the purpose of selecting representatives, the equality of the citizen in the legislative process may be diluted and the individual citizen discriminated against unless such geographical divisions or citizens group or classification are carefully selected to preserve the equality of participation in the process of the citizen in one division or group to that of citizens in another. Just as the participation in the process itself cannot be prevented by geographical districting that may discriminate against certain groups,[43] so should a districting be invalid that, although not prohibiting participation in the process by the citizen, would dilute his equality in such process.[44] This would follow whether the unit from which the representative would be elected was based on race, sex, occupation, economic group,[45] wealth, or geography.[46]

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[43] *Gomillion v. Lightfoot*, 364 US 339, 81 S Ct 125, 5 L ed 2d 110 (1960).

[44] See fn. 4 to Opinion of Mr. Justice Stone in *U. S. v. Carolene Products Co.*, 304 US 144, 152-3, 58 S Ct 778, 82 L ed 1234, 1241-2 (1938); See also Dissenting Opinion of Mr. Justice Douglas, with whom Mr. Justice Black concurred, in *MacDougall v. Green*, 335 US 281, 287, 69 S Ct 1, 93 L ed 3, 9 (1948).

[45] However, see *Levitt v. Maynard*, 104 N.H. 243, 182 A. 2d 897 (1962).

[46] See Dissenting Opinion of Mr. Justice Black in *Colegrove v. Green*, 328 US 549, 566, 66 S Ct 1198, 90 L ed 1432, 1443 (1946).

(c) ***Equality is indivisible; it is a matter of numbers, although mathematical exactitude is not required.***

To recognize and guarantee equality to vote in the selection of representatives and then to take away that equality in the voice of the representative in the legislative body, or process, to or for which elected is to make the first equality meaningless and to deny equality just as effectively as if the vote for the representative initially had been given unequal weight. The concept of one person, one vote, permits no deviation, no dilution and is merely a matter of numbers, of the ratio 1:1.[47] This is not to mean that a state may not apportion representation in its legislative body on a reasonable basis, equally applicable to all citizens within the State, such as total number of inhabitants, qualified electors, or residents over the age of twenty-one years or some other age, so long as the basis is reasonably related to the question of representation.[48] Any such basis, however, is subject to measurement in term of numbers, which enables the equality to be measured and determined. However, once the basis for representation is determined by the State, unless the election of representatives is to be by the State as a whole, the division of the State into smaller units or components must again be on some reasonable and rational formula. Mathematical exactitude is not required.[48a] Approximation or, in the words of the applicable constitutional provision in Alabama, "as nearly equal * * * as

[47] *Gray v. Sanders, supra*, pp 830-1.

[48] Regardless of by whom elected, the representative in theory represents all persons within or a part of the unit from and by which he was elected, whether they be voters or non-voters, supporters or opponents.

[48a] *Sincock v. Duffy*, 215 F. Supp. 169, 184 (D. Dela., 1963).

may be." would grant equal protection and would satisfy the constitutional requirements.[49]

In view of the myriad possible apportionments, where representatives are elected by subdivision, geographical or otherwise, of the State, consistent with an apportionment policy based on numbers, well developed and familiar judicial standards under the Equal Protection Clause would be available to test and to determine the validity of such subdivision.[50] However, it is submitted that this would not necessarily be the minimum rationality test used in *Williamson v. Lee Optical* and similar cases, but, due to the mathematical nature of the policy, the subdivision could be definitely measured and tested. Also, unlike the state regulation at issue in *Williamson v. Lee Optical*, this is the type of state action which should be subjected to more exacting judicial scrutiny under the general prohibitions of the Fourteenth Amendment.[51]

(d) ***Equality of representation must mean equality in the entire legislative process.***

The legislative process in Alabama, by the 1901 Constitution, is placed in a legislature composed of two houses. Both houses are integral parts of this State's legislative process. Both may initiate legislation, except for taxation,[52] but neither by itself can enact legislation; however, either may reject or fail to act on a bill which has been approved by the other. Thus, the representative voice of the constituent citizens in the legislature must not only be equal in electing the members of each house,

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[49] See § 200, Article IX, 1901 Constitution; See also *Stiglitz v. Schardien*, 239 Ky. 799, 40 S.W. 2d 315, 321 (1931), and *Ragland v. Anderson*, 125 Ky. 141, 100 S.W. 865, 869 (1907).

[50] *Baker v. Carr, infra*, fn. 23; *Williamson v. Lee Optical of Oklahoma, Inc.*, 348 US 483, 75 S Ct 461, 99 L ed 563 (1955).

[51] See fn. 4 to the Opinion of Mr. Justice Stone in *U. S. v. Carolene Products Co., infra*, fn. 44.

[52] See § 70, Article IV, 1901 Constitution.

but must be equal in the voice of each representative in each house. The constitutional mandate of equal protection means equal voice in the entire legislative process and not equal voice in only a portion thereof. One half equality is no equality. Having equality in one house would insure to a majority of the citizens, through election of a majority of the representatives, only a negative control or a veto over legislation and, at most, inaction.[53] However, inaction, through inability to enact a law or to change an existing one, may result in discrimination and even denial of equal protection of the law.[54] The purpose of government is to govern and this requires the ability to take affirmative action. Equal protection of the laws means the protection of equal laws, of laws that embody the principle of equality. This may be insured and protected, in the last analysis, by judicial review, but fundamentally, it should be present initially in the lawmaking process itself.

Minority process, which results when equality of representation in the lawmaking procedure is denied or diluted, is not due process. Protection of the rights of members of a minority is a legitimate concern of all three branches of a government. However, protection of the rights of members of a minority does not require that such minority control the government or even its lawmaking process. Derogation of the principle of majority rule by means of instituting minority control unduly restricts and may even stultify and clog the political and lawmaking processes. Restrictions on the majority,

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[53] Having been denied for a half a century their rightful voice in the Alabama Legislature, the citizens of the more populous areas of that State under such circumstances would perhaps be in a better position than they have been during that period but would still not be able to strike, or even merely amend, laws that, if not discriminatory against the majority, may not have represented their wishes or views.

[54] See *Nashville, Chattanooga & St. Louis Railway v. Walters*, 294 US 405, 415, 55 S Ct 486, 79 L ed 949, 955 (1935).

such as the requirement of extraordinary majorities for the enactment or adoption of certain laws or the requirement that certain types of legislation become effective only after certain time limitations or even after approval by more than one session of the legislature, although not derogating from the principle of majority rule, may be a means of insuring against precipitate action and of allowing for greater deliberation upon proposed legislation. It is through such methods, and not by means of unequal representation in, or minority control over, the legislative process, that the state may assure a proper diffusion of political initiative or control as between the various elements of its population.[55]

A bicameral legislature may presuppose a different basis of representation in each house. However, a study of the constitutional history of Alabama does not indicate that this is the predominant or even principal purpose of the bicameral legislature in that State. Rather, in this State, as in most other states having a bicameral legislature, its principal purpose is to serve as a part of the checks and balances found throughout the governmental organization and process. This valid function may be maintained in two houses without having either a different basis of representation in each or a minority control in one of the two houses. The checks and balances can be maintained by the devices previously mentioned, of extraordinary majorities for, or delay by one means or another in, the final adoption of legislation.[56]

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[55] *MacDougal v. Green*, 335 US 281, 284, 69 S Ct 1, 93 L ed 3, 7 (1948).

[56] See *Mann v. Davis*, 213 F. Supp. 577, 584-5 (E.D. Va., 1962).

4. ***The District Court failed to apportion, or to set out guidelines for the legislature to follow in apportioning, both houses of the legislature, according to the norm of population.***

The District Court determined that certain detailed requirements of the 1901 Constitution, which to some extent diluted and conflicted with the dominant theme of the Alabama Constitution that apportionment of the Legislature must be based on population, made "it obvious that in **neither** the house or the senate can representation be based strictly and entirely upon population."[57] However, it further held that "The result may well be that representation according to population **to some extent** must be required in **both** Houses if invidious discrimination in the legislative systems as a whole is to be avoided."[58] The Appellants sought and approved the Court's adoption of the "Equal Proportions Method" for apportionment as being the fairest mathematical formula.[59] However, as previously noted, the equality of the individual citizen is still not maintained where there is a provision that, regardless of population, each county must be assigned one representative. The Court recognized this conflict, but in its Decree accepted this provision with the consequent dilution of Plaintiffs' rights. There is nothing to indicate that a provision giving at

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[57] 208 F. Supp. 431, 439 (R. 150) (emphasis by the Court).

[58] 208 F. Supp. 431, 439 (R. 151) (emphasis by the Court). Appellants strongly urge that the District Court was correct in deciding that the question concerned invidious discrimination *"in the legislative systems as a whole."*

[59] By this method the difference between the representation of any two districts is the smallest possible when measured both by the relative difference in the average population per representative and by the relative difference in the individual share in the representative. See *"A Survey of Methods of Reapportionment in the Congress"*, by Edward B. Huntington, Department of Mathematics, Harvard University, Sen. Doc No. 304, 76th Congress, 3rd Session, cited in fn. 9 to the District Court's Opinion (p. 440) (R. 153). See also the description of the formula in Intervenor-Plaintiff's Amended Complaint (R. 86) and Appendix A to Affidavit of Intervening Plaintiff David J. Vann (R. 116-129).

least one representative to each county should override the dominant policy and constitutional principle of equality of the citizen in representation in the legislative process.

The county is the basic unit for determining geographical areas or districts from which representatives will be elected to the Alabama Legislature. In the House of Representatives, such district may be single or multi-representative, but it is never larger than one county. In the Senate, districts may be composed of one or more counties, but with not more than one senator from each district and, apparently, may not be smaller than a county. Just as counties may be grouped in forming a senatorial district in order to equalize the number of inhabitants in each district, so may the districts from which the representatives are elected be equalized by grouping contiguous counties. No doubt, the principal considerations, among others, behind the provision that each county should be entitled to one representative were (1) the maintenance of districts small in area and (2) the resulting close relationship between the representative therefrom and his constituents therein. However, these salutary purposes can be achieved without destroying the constitutional principle of equality in representation. Counties with a population less than the ratio which would entitle such county to at least one representative could be joined with an adjacent county or counties having a population entitling such county or counties to more than one representative, so that with the combined population the total number of representatives from such district would be approximately equal to the average ratio of representation in that house throughout the State. Coupled with this would be a provision that each county within such multi-county district would be entitled to have at least one of the several representatives from such

multi-county district be a resident of such county, although he be elected by the district as a whole, thus insuring each county that it would have at least one resident representative. However, each representative would be elected by, be responsible to, and represent voters of the district as a whole, thereby satisfying the constitutional requirement of equality of representation.[60]

The inadequacies of the apportionment of the Senate by the District Court is most glaring and was recognized by the Court itself. Prior to the reapportionment ordered by the District Court, a majority of the members of the Senate were elected from districts containing 25.1% of the State's population. After its reapportionment, a majority would be elected from districts containing 27.6% of the State's population, an improvement of only 2.6% (R. 152). Appellants strongly urge that not only is this not required by the pertinent provisions of the 1901 Constitution, but if so, they are patently in conflict with the constitutional standard.[61]

It is submitted that the requirement that no county shall be divided between two districts, which dates from the 1819 Constitution, means that no county could be

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[60] For example, in Alabama, with a house of 106 members, each representative should represent 30,607 inhabitants (R. 165). However, Washington County, with a population of only 15,372, would be joined with adjacent Mobile County, with a population of 314,301, to form a district, with a population of 329,673. This district should have 10 representatives, one of whom would be a resident of Washington County and the rest residents of Mobile County, although all would be elected by the district. However, the House of Representatives, without such a plan and under the fair method of equal proportions as used by the District Court, would have a majority of its members elected from counties containing 42.3% of the State's population. At the same time, the number of representatives in the House sufficient to block a proposed amendment to the Constitution of the State of Alabama, which requires a 3/5th vote of approval in each House, would be elected from counties containing only 28% of the State's population.

[61] As recognized by the District Court in its statement that "If the provisions of the State Constitution do not permit a single county to be divided into more than one senatorial district, such restriction would have to be held in conflict with the overriding requirement of equal protection of the laws provided by the Federal Constitution." 208 F. Supp. 431, 442 (R. 155).

divided so that a portion of such county could be added to another county or counties, or portions thereof, to form one district, and the remainder of such county would be added to another county or counties, or portions thereof, to form a second district, thereby preventing a county, otherwise entitled, from being a senatorial district in itself. Certainly, the inhabitants of a county would have no objection to dividing a county into more than one senatorial district and thereby increasing their representation and voice in the legislative process. The purpose of the constitutional prohibition was to protect the county by preserving its integrity as such and by preventing the dilution of the voting strength of its citizens that would result from dividing its citizens and representatives among districts composed principally of other counties. It was not intended, however, to prevent a county's being divided into self-contained districts, thereby obtaining additional representation to which it was entitled by its population.[62]

The final and overriding basis for this appeal is the failure of the District Court to set out the constitutional standard or norm, which must be followed by the State Legislature in reapportioning itself. As recognized by the District Court, the duty of reapportionment rests on the Legislature (R. 154), and the Court acted reluctantly in the matter and to a limited extent, but with the expressed hope that this limited reapportionment would release the stranglehold on the Legislature and permit it to reapportion itself. (R. 155) However, aside from the indirect references to the fact that to some extent both houses may have to be apportioned on the basis of popu-

[62] See *Ragland v. Anderson, infra*, fn. 49; but compare with *Brown v. Saunders*, 159 Va. 28, 166 S.E. 105 (1932). Unlike the history of Virginia, as reported in the latter case, in which it had been an unbroken custom of that State to refrain from dividing any county or city into separate districts, Alabama during the period 1819 through 1865 did allow such divisions. See § 8 (Article III), 1819 Constitution (p. 56).

lation to meet constitutional standards, it did not set out the applicable constitutional standard. A misleading and erroneous principle or standard may have been set by its reference to *Toombs v. Fortson*, 205 F. Supp. 248 (N.D., Ga., 1962) and quotation therefrom to the effect that " * * * we do not find any authoritative decision by the Supreme Court that causes us to require that in order to give the plaintiff his constitutional rights the state legislature must be constituted of two Houses, both of which are elected according to population." (R. 150-1) and its reference to the *Maryland Committee for Fair Representation, et al. v. Tawes, Governor*, 228 Md. 412, 180 A. 2d 656 (1962) (R. 151), which held that the constitutional requirements were satisfied if only one house of a two-house legislature is apportioned on the basis of population. In order for the Legislature to constitutionally reapportion itself, the constitutional standards or norms should be set out for its guidance and adherence.

CONCLUSION

In conclusion, it is respectfully submitted that the District Court erred (1) in failing to apportion the House of Representatives of the Alabama Legislature on the basis of population by joining any county with a population insufficient to entitle it to at least one representative with an adjacent county or counties to form a district of such population that the inhabitants of such district would have representation in that House equal to that of other districts, (2) in failing to apportion the Senate of the Alabama Legislature on the basis of population by allowing counties with sufficient population to be divided into, or to comprise, more than one senatorial district, resulting in districts as nearly equal to each other in number of inhabitants as possible, and (3) in

failing to set out the Constitutional standards or norms, or guide lines thereto, for the guidance of the Legislature of Alabama, in reapportioning itself, and particularly, the constitutional proposition that **both** houses of the Alabama Legislature must be apportioned on the basis of population.

For that reason, and on the basis of the authorities hereinbefore cited, this proceeding should be remanded to the District Court with instructions to correct its Opinion and Decree in accordance with the Prayer for Relief made by Plaintiffs and with the applicable constitutional principles.

Respectfully submitted,

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Mobile, Alabama,
Attorney for Appellants-Intervenors.

August 23, 1963.

PROOF OF SERVICE

I, JOHN W. McCONNELL, JR., the attorney for Appellants-Intervenors herein and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 23rd day of August, 1963, I served copies of the foregoing Brief of Appellants-Intervenors on the several parties hereto, as follows:

1. On Bettye Frink, Secretary of State of the State of Alabama; B. A. Reynolds, Judge of Probate of Dallas County, Alabama; Frank Pearce, Judge of Probate of Marion County, Alabama, et al., Appellees-Defendants, by

mailing a copy in a duly addressed envelope, with first-class postage prepaid as follows:

(a) To Hon. Thomas G. Gayle, 1104-1/2 Water Avenue, Selma, Alabama; To Hon. Joseph E. Wilkinson, Jr., 310 Broad Street, Selma, Alabama; and To Hon. McLean Pitts, 15 Broad Street, Selma, Alabama, attorneys for Appellee Reynolds;

(b) To Hon. Rankin Fite, Hamilton, Alabama, attorney for Appellee Pearce;

(c) To Hon. Richmond Flowers, Attorney General, State of Alabama, Montgomery, Alabama, for Appellees Frink, et al.,

2. On M. O. Sims, et al., Appellees-Plaintiffs, by mailing a copy in a duly addressed envelope, with first class postage prepaid, to their attorneys of record, as follows:

(a) To. Hon. Charles Morgan, Jr., Bank for Savings Building, Birmingham, Alabama;

(b) To. Hon. George P. Taylor, 621 Frank Nelson Building, Birmingham, Alabama.

3. On R. E. Farr, et al., Appellees-Intervenors, by mailing a copy in a duly addressed envelope, with first class postage prepaid, to their attorney of record, the Hon. Jerome A. Cooper, Bank for Savings Building, Birmingham, Alabama;

4. On David J. Vann, et al., Appellees-Intervenors, by mailing a copy in a duly addressed envelope, with first class postage prepaid, to their attorneys of record, as follows:

(a) The Hon. David J. Vann, 2100 Comer Building, Birmingham, Alabama;

(b) The Hon. Robert S. Vance, 1703 Comer Building, Birmingham, Alabama; and

(c) The Hon. C. H. Erskine Smith, First National Building, Birmingham, Alabama.

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APPENDIX A

1. 42 U.S.C. § 1983.

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in any action at law, suit in equity or other proper proceeding for redress."

2. Section 1, Fourteenth Amendment.

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

3. 1901 Constitution.

Article IV (Legislative Department)

> "Section 50. The Legislature shall consist of not more than thirty-five senators, and not more than one hundred and five members of the house of representatives, to be apportioned among the several districts and counties, as prescribed in this Constitution; provided that in addition to the above number of representatives, each new county hereafter created shall be entitled to one representative."

Article IX (Representation)

> "Section 197. The whole number of senators shall be not less than one-fourth or more than one-third of the whole number of representatives."

"Section 198. The house of representatives shall consist of not more than one hundred and five members, unless new counties shall be created, in which event each new county shall be entitled to one representative. The members of the house of representatives shall be apportioned by the legislature among the several counties of the state, according to the number of inhabitants in them, respectively, as ascertained by the decennial census of the United States, which apportionment, when made, shall not be subject to alteration until the next session of the legislature after the next decennial census of the United States shall have been taken."

"Section 199. It shall be the duty of the legislature at its first session after the taking of the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the number of representatives and apportion them among the several counties of the state, according to the number of inhabitants in them, respectively, provided, that each county shall be entitled to at least one representative."

"Section 200. It shall be the duty of the legislature at its first session after taking of the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the number of senators, and to divide the state into as many senatorial districts as there are senators, which districts shall be as nearly equal to each other in the number of inhabitants as may be, and each shall be entitled to one senator, and no more; and such districts, when formed, shall not be changed until the next apportioning session of the legislature, after the next decennial census of the United States shall have been taken; provided, that counties created after the next preceding appor-

tioning session of the legislature may be attached to senatorial districts. No county shall be divided between two districts, and no district shall be made up of two or more counties not contiguous to each other.

Article XVIII (Mode of Amending the Constitution).

"Section 284. * * * Representation in the legislature shall be based upon population, and such basis of representation shall not be changed by constitutional amendments."

4. Code of Alabama (1940, as amended), Title 32.

"Section 1. House of Representatives. The house of representatives of the legislature consists of one hundred and six members, distributed among the several counties as follows: The counties of Autauga, Baldwin, Bibb, Blount, Cherokee, Chilton, Choctaw, Clay, Cleburne, Coffee, Colbert, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dale, DeKalb, Escambia, Fayette, Franklin, Geneva, Greene, Houston, Lamar, Lawrence, Limestone, Macon, Marion, Marshall, Monroe, Pickens, Randolph, Shelby, St. Clair, Washington, and Winston shall each elect one representative. The counties of Barbour, Bullock, Butler, Calhoun, Chambers, Clarke, Elmore, Etowah, Hale, Henry, Jackson, Lauderdale, Lee, Lowndes, Madison, Marengo, Morgan, Perry, Pike, Russell, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker and Wilcox shall each elect two representatives. The counties of Dallas and Mobile shall each elect three representatives. The county of Montgomery shall elect four representatives; and the county of Jefferson shall elect seven representatives.

"Section 2. Senatorial districts. The senate of the legislature shall consist of thirty-five members, and the state is divided into thirty-five senatorial

districts, as follows: First, Lauderdale and Limestone; second, Lawrence and Morgan; third, Blount, Cullman and Winston; fourth, Madison; fifth, Jackson and Marshall; sixth, Etowah and St. Clair; seventh, Calhoun; eighth, Talladega; ninth, Chambers and Randolph; tenth, Tallapoosa and Elmore; eleventh, Tuscaloosa; twelfth, Fayette, Lamar and Walker; thirteenth, Jefferson; fourteenth, Pickens and Sumter; fifteenth, Autauga, Chilton and Shelby; sixteenth, Lowndes; seventeenth, Butler, Conecuh, and Covington; eighteenth, Bibb and Perry; nineteenth, Choctaw, Clark and Washington; twentieth, Marengo; twenty-first, Baldwin, Escambia and Monroe; twenty-second, Wilcox; twenty-third, Dale and Geneva; twenty-fourth, Barbour; twenty-fifth, Coffee, Crenshaw and Pike; twenty-sixth, Bullock and Macon; twenty-seventh, Lee and Russell; twenty-eighth, Montgomery; twenty-ninth, Cherokee and DeKalb; thirtieth, Dallas; thirty-first, Colbert, Franklin and Marion; thirty-second, Greene and Hale; thirty-third, Mobile; thirty-fourth, Clay, Cleburne and Coosa; thirty-fifth, Henry and Houston."

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IN THE

Supreme Court of the United States

October Term, 1963

No. 23

R. A. REYNOLDS, etc., et al., *Appellants*,

vs.

M. O. SIMS, et al.

No. 27

DAVID J. VANN AND ROBERT S. VANCE, *Appellants*,

vs.

BETTYE FRINK, Secretary of State of the State of Alabama, et al.

No. 41

JOHN W. McCONNELL, JR., et al., *Appellants*,

vs.

BETTYE FRINK, Secretary of State of the State of Alabama, et al.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

BRIEF FOR APPELLEES R. E. FARR, ET AL.

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CASES CITED

Baker v. *Carr*, 369 U. S. 186 (1962)

New State Ice Co. v. *Liebmann*, 285 U. S. 262 (1932)

Sims v. *Frink*, 208 F. Supp. 431 (M.D. Ala. 1962)

STATUTES CITED

Constitution of Alabama 1901, Code of Alabama 1940:

Artiele III, § 50

Article IX, § 198

Article IX, §-199

Article IX, § 200

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APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

STATEMENT OF THE CASE

We make this limited addition to the statements of the case by appellants. Appellee R. E. Farr is a resident and citizen of Alabama and of the United States, and is District Director of the United Steelworkers of America, AFL-CIO, an unincorporated association. Appellees Marshall Meadows, Jack Hopping, Jack Ryan and Max W. Morgan

are residents of that State, citizens of the United States, and officials of Local Unions affiliated with that organization, in Jefferson, Etowah and Mobile Counties. (R. 44) These appellees were the original intervenors as plaintiffs in this proceeding. Their intervention was allowed November 16, 1961. (R. 47).

QUESTION PRESENTED

The only possibly substantial question presented is:

May a Three Judge District Court order partial reapportionment of a State Legislature so as to "loosen the strangle hold" and, retaining jurisdiction, reasonably await possible action by the State Legislature before proceeding to final, complete relief?

SUMMARY OF ARGUMENT

Under the requirements of § 50, § 198, § 199 and § 200, of the Constitution of Alabama neither the membership of the House nor of the Senate can be based strictly and entirely upon population.[1] § 284 of that Constitution states that "representation in the Legislature shall be based upon population, and such basis of representation shall not be changed by constitutional amendments." But conflicting requirements in § 50, § 197, and § 200 make absolute equality of representation impossible. The Court below was forced to deal at the outset with those paradoxical requirements in the State Constitution.

Accordingly, in preliminary fashion, partial reapportionment of the Alabama Senate as provided in the "Crawford-Webb Act," and partial reapportionment of the Alabama House of Representatives as provided in the "67-

[1] R. 13.

Senator Amendment," were ordered into effect. (R. 155) But, in doing so, the Court was careful to state:

> "It is this Court's further intention to retain jurisdiction of this case and defer any hearing on plaintiffs' motion for a final injunction until the Legislature, as provisionally reapportioned by this order, has an opportunity to provide for a true reapportionment of both Houses of the Alabama Legislature. The Court hopes that the moderate steps taken by this order may be enough to break the strangle hold. They certainly will not suffice as any permanent reapportionment. If they should prove insufficient to break the strangle hold, the Court remains under the solemn duty to relieve the plaintiffs and other citizens like situated from further denial of the equal protection of the laws. That much must be accomplished before there can be a final disposition of this case." (R. 155-6) 208 F. Supp. 431, 442

That what the Court below did is supported by *Baker* v. *Carr*, 369 U. S. 186, is hardly subject to argument.

Our comment, therefore, relates largely to the cross appeals which complain that more should have been ordered. In proceeding no further than it did, the Court, we feel, likewise was correct. An historic first step is not erroneous merely because it is not immediately the full leap.

The District Court now has made a start. It has discharged a heavy, trying, burden that few, if any, judicial bodies essayed before. An ancient legislative strangle hold has been loosened by its decree. There have at least been resultant stirrings in the Legislature of Alabama—the body which ultimately will have the final say.[2]

In such a context it would be harsh indeed to hold

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[2] "Reapportionment fires burn. Legislative battles ahead." The Birmingham News, July 21, 1963

this estimable Three Judge Court in error. That Court has given unquestionable evidence of its willingness to act —and to act further if need be. Having done so, it needs the imprimatur of the Supreme Court's approval and affirmance.

No fixed mandate of the United States Constitution requires each State to select its legislators by precisely identical mathematical formulas. Subject to the overriding requirements of the Fourteenth Amendment, the particular form of, or basis for, election of State legislators in some respects is left to the States. The actual steps required for constitutional resolution of the ambiguities and conflicts in Alabama's organic law have most likely—and possibly exclusive—application only in Alabama.

In another context, Mr. Justice Brandeis noted that States should be free to "try novel, social and economic experiments."[3]

So, here, in the difficult field of representation within the legislative bodies of the States, limited variety of results is not entirely undesirable or necessarily incompatible with the Fourteenth Amendment. The indigenous Federal courts must be relied upon to keep matters constitutionally in hand. Such keeping has materialized in Alabama.

ARGUMENT

PROPOSITION I. THE DISTRICT COURT EXERCISED JUDICIAL DISCRETION AND IN THE ABSENCE OF A CLEAR ABUSE OF DISCRETION ITS DECREE SHOULD BE UPHELD.

We do not disagree with the contention that further reapportionment of Alabama's Legislature is required. We

[3] New State Ice Co. v. Liebmann, 285 U. S. 262, 311, (1932) (dissenting opinion).

do say that the Court below did not err in going no further than it did—at the time it acted.

It is axiomatic that courts exercise a wide discretion in deciding declaratory judgment actions, in passing upon acts of of legislatures and in fashioning injunctive relief. There has been no abuse of discretion here, particularly in light of the delicately complex nature of the problems raised.

PROPOSITION II. THE DISTRICT COURT MAY UTILIZE INFORMED RESTRAINT IN ITS CHOICE OF MEANS TO BE EMPLOYED IN ACHIEVING FAIR APPORTIONMENT OF LEGISLATIVE REPRESENTATIONS OF A STATE.

The District Court has found at least initial help in the plan suggested in the concurring opinion of Mr. Justice Clark in *Baker* v. *Carr, supra:*

> "One plan might be to start with the existing assembly districts, consolidate some of them, and award the seats thus released to those counties suffering the most egregious discrimination. Other possibilities are present and might be more effective. But the plan here suggested would at least release the strangle hold now on the Assembly and permit it to redistrict itself." At p. 260.

The District Court has undertaken to do precisely that—to release the strangle hold. However, nowhere did the District Court suggest that more drastic reapportionment would not be undertaken should adamant inaction of the Legislature so require.

While the relief granted by the District Court was not the full measure sought, nonetheless it must be remembered that the State-wide election which followed the District Court's decree was among the first Court-ordered elec-

tions ever held in this country. And in order to make its decree effective, the Court extended its reach to the Secretary of State and the Attorney General of Alabama, to the State Executive Heads of the major political parties, and to the Judge of Probate of every county in Alabama. (R. 177)

The various alleged omissions from the decree of the District Court as argued by the cross-appellants, cannot be equated to reversible error. None of those alleged omissions have been in fact overlooked by the District Court. The District Court has made clear its willingness and determination to supervise the constitutional apportionment of legislative representatives according to population. Had the District Court refused to deal with the problems posed by the malapportionment of the Legislature, the matter would stand differently. But the people of Alabama are not, as the cross-appellants suggest, adrift upon the same turbulent seas which have existed since the Constitutional Convention in 1901.

The path leading to equality at the ballot box has been cleared.

We ask that this Supreme Court vindicate the pioneering decree of the District Court.

The several appeals and cross-appeals should be dismissed and the judgment and decree of the District Court should be affirmed.

Respectfully submitted,

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Birmingham, Alabama

Attorneys for Appellees
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CERTIFICATE OF SERVICE

I, Jerome A. Cooper, one of the attorneys for Appellees R. E. Farr, et al., as a member of the Bar of the Supreme Court of the United States, hereby certify that on the .... day of September, 1963, I served copies of the foregoing Brief on the several appellants by mailing copies in duly addressed envelopes, with postage prepaid, to their respective attorneys of record as follows:

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Supreme Court, U.S.
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No. 27.

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Appellants,

vs.

SIBYLLE BRYAN, Secretary of State of the State of Alabama; B. A. REYNOLDS, Judge of Probate of Dallas County, Alabama; FRANK HARRIS, Judge of Probate of Marion County, Alabama, et al,
Appellees.

On Appeal from the United States District Court for the Middle District of Alabama, Southern Division.

BRIEF FOR APPELLEES, B. A. REYNOLDS AS JUDGE OF PROBATE OF DALLAS COUNTY, ALABAMA, AND FRANK HARRIS AS JUDGE OF PROBATE OF MARION COUNTY, ALABAMA.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1963.

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DAVID J. VANN and ROBERT S. VANCE,
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BETTYE FRINK, Secretary of State of the State of Alabama; B. A. REYNOLDS, Judge of Probate of Dallas County, Alabama; FRANK PEARCE, Judge of Probate of Marion County, Alabama; et al.,
Appellees.

On Appeal from the United States District Court for the Middle District of Alabama, Northern Division.

BRIEF FOR APPELLEES, B. A. REYNOLDS AS JUDGE OF PROBATE OF DALLAS COUNTY, ALABAMA, AND FRANK PEARCE AS JUDGE OF PROBATE OF MARION COUNTY, ALABAMA.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

In addition to the Alabama constitutional and statutory provisions incorporated in Appellants' brief, the following other Alabama constitutional provisions and statutes are involved in this case:

> Art. 9, Sec. 201. Should any decennial census of the United States not be taken, or if when taken, the same, as to this state, be not full and satis-

factory, the Legislature shall have power at its first session after the time shall have elapsed for the taking of said census, to provide for an enumeration of all the inhabitants of this State, upon which it shall be the duty of the Legislature to make the apportionment of Representatives and Senators as provided for in this article. Vol. 1, p. 203, Code of Alabama 1940.

Art. 9, Sec. 202. Until the legislature shall make an apportionment of representatives among the several counties, as provided in the preceding section, the counties of Autauga, Baldwin, Bibb, Blount, Cherokee, Chilton, Choctaw, Clay, Cleburne, Coffee, Colbert, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dale, DeKalb, Escambia, Fayette, Franklin, Geneva, Greene, Lamar, Lawrence, Limestone, Macon, Marion, Marshall, Monroe, Pickens, Randolph, St. Clair, Shelby, Washington, and Winston, shall each have one representative; the counties of Barbour, Bullock, Butler, Calhoun, Chambers, Clarke, Elmore, Etowah, Hale, Henry, Jackson, Lauderdale, Lee, Lowndes, Madison, Marengo, Morgan, Perry, Pike, Russell, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, and Wilcox, shall each have two representatives; the counties of Dallas and Mobile shall each have three representatives; the county of Montgomery shall have four representatives; and the county of Jefferson shall have seven representatives. Vol. 1, p. 203, Code of Alabama 1940.

Sec. 203. Until the legislature shall divide the state into senatorial districts, as herein provided, the senatorial districts shall be as follows:

First district, Lauderdale and Limestone; second district, Lawrence and Morgan; third district, Blount, Cullman, and Winston; fourth district, Madison; fifth district, Jackson and Marshall; sixth district, Etowah and St. Clair; seventh district, Calhoun; eighth district, Talladega; ninth district, Chambers and Randolph; tenth district, Tallapoosa and Elmore; eleventh district, Tuscaloosa; twelfth district, Fayette, Lamar and Walker; thirteenth district, Jefferson; fourteenth district, Pickens and Sumter; fifteenth district, Autauga, Chilton, and Shelby; sixteenth district, Lowndes; seventeenth district, Butler, Conecuh, and Covington; eighteenth district, Bibb and Perry; nineteenth district, Choctaw, Clarke, and Washington; twentieth district, Marengo; twenty-first district, Baldwin, Escambia, and Monroe; twenty-second district, Wilcox; twenty-third district, Dale and Geneva; twenty-fourth district, Barbour; twenty-fifth district, Coffee, Crenshaw, and Pike; twenty-sixth district, Bullock and Macon; twenty-seventh district, Lee and Russell; twenty-eighth district, Montgomery; twenty-ninth district, Cherokee and DeKalb; thirtieth district, Dallas; thirty-first district, Colbert, Franklin, and Marion; thirty-second district, Greene and Hale; thirty-third district, Mobile; thirty-fourth district, Cleburne, Clay, and Coosa; thirty-fifth district, Henry.

Art. 18, Sec. 284 . . . Representation in the Legislature shall be based upon population, and such basis of representation shall not be changed by constitutional amendment. Vol. 1, p. 287, Code of Alabama 1940.

Sections 42 and 43 of Art. 3 of the Constitution of 1901 and Section 44 of Art. 4 read as follows:

> Section 42. The powers of the government of the State of Alabama shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to-wit: Those which are legislative, to one; those which are executive, to another; and those which are judicial, to another. Vol. 1, p. 88, Code of Alabama 1940.
>
> Section 43. In the government of this state, except in the instances in this Constitution hereinafter expressly directed or permitted, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end that it may be a government of laws and not of men. Vol. 1, p. 91, Code of Alabama 1940.
>
> Section 44. The legislative power of this state shall be vested in a legislature, which shall consist of a senate and a house of representatives. Vol. 1, p. 92, Code of Alabama 1940.

The following statutes were declared unconstitutional in this suit:

Act Number 93, Senate Bill 29, commonly referred to as the "67-Senator Amendment" proposing an amendment to the Constitution of Alabama relating to Legislative apportionment as passed in the 1962 Special Ses-

sion of the Legislature of Alabama, (Acts of Alabama, Special Session 1962, p. 124) which reads as follows:

> An Act, proposing an amendment to the Constitution of Alabama relating to legislative apportionment. BE IT ENACTED BY THE LEGISLATURE OF ALABAMA: Section 1. The following amendment to the Constitution of Alabama 1901 is proposed and shall become valid as a part thereof when approved and proclaimed as prescribed by law: Proposed Amendment 1. The legislature of Alabama shall consist of a senator for each county and 106 members of the house of representatives, to be apportioned among the several counties as herein prescribed; provided, that in addition to the above number of representatives each new county hereafter created shall be entitled to at least one representative. 2. At the general election in 1966, and every four years thereafter, a senator shall be elected by the qualified electors of each county in the state. 3. At the general election in 1966, and every four years thereafter, until the house of representatives is reapportioned as herein provided, the qualified electors of each county in the state shall elect such number of representatives as may be apportioned to the county as follows: The County of Jefferson shall have and elect seventeen representatives; the county of Mobile shall have and elect eight representatives; the County of Montgomery shall have and elect four representatives; the counties of Calhoun, Etowah, Madison and Tuscaloosa shall each have and elect three representatives; the counties of Dallas, Lauderdale, Morgan, Talladega and Walker shall each have and elect two representatives; and the remaining counties of the state shall each have and

elect one representative. 4. On the first day, or within one week thereafter, of the regular session of the legislature in 1971, and every fifth regular session thereafter, the clerk of the house of representatives shall transmit to the secretary of state a statement showing the whole number of persons in each county under the most recent decennial census of the United States, and the number of representatives to which each county will be entitled under an apportionment of the then existing number of representatives by the method known as the method of equal proportions, no county to receive less than one representative. 5. In Section 284 of this Constitution as amended, strike out the last sentence thereof and insert the following sentence: Representation in the house of representatives of the legislature shall be based upon population. 6. Article IX (sections 197-203) of this Constitution is hereby expressly repealed. Section 2. An election upon the proposed amendment is ordered to be held on the date of the general election next succeeding the final adjournment of the current session of the Legislature. The election shall be held in accordance with the provisions of Sections 284 and 285 of the Constitution of Alabama, as amended, and Chapter 1, Article 18, Title 17 of the Code of Alabama 1940. Section 3. Notice of the election and of the proposed amendment shall be given by proclamation of the Governor, which proclamation shall be published once a week for four successive weeks next preceding the day appointed for the election in a newspaper in each county of the State. In every county in which no newspaper is published, a copy of the notice shall be posted at each courthouse and post office.

Act Number 91, House Bill 59, commonly referred to as the "Crawford-Webb Bill" passed in the 1962 Special Session of the Legislature of Alabama (Acts of Alabama, Special Session 1962, p. 121) and approved by the Governor of the State of Alabama on July 12th, 1962 is as follows:

An Act, to fix the number of senators and representatives in the legislature, divide the state into senatorial districts, and apportion the senators and representatives among the several districts and counties.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. The senate of the legislature shall be composed of 35 senators representing 35 senatorial districts, each district to elect one senator and no more.

Section 2. The state is hereby divided into 35 senatorial districts as follows:

First, the counties of Lauderdale and Limestone; second, the counties of Lawrence and Morgan; third, the counties of Cullman and Winston; fourth, the county of Madison; fifth, the counties of Jackson and Marshall; sixth, the county of Etowah; seventh, the county of Calhoun; eighth, the county of Talladega; ninth, the counties of Randolph and Chambers; tenth, the counties of Elmore and Tallapoosa; eleventh, the county of Tuscaloosa; twelfth, the counties of Fayette and Walker; thirteenth, the county of Jefferson; fourteenth, the counties of Pickens and Lamar; fifteenth, the counties of Autauga, Chilton and Shelby; sixteenth, the counties

of Monroe and Wilcox; seventeenth, the counties of Butler, Covington and Conecuh; eighteenth, the counties of Bibb and Perry; nineteenth, the counties of Clarke, Choctaw and Washington; twentieth, the counties of Marengo and Sumter; twenty-first, the counties of Baldwin and Escambia; twenty-second, the counties of Blount and St. Clair; twenty-third, the counties of Dale and Geneva; twenty-fourth, the counties of Barbour and Pike; twenty-fifth, the counties of Coffee and Crenshaw; twenty-sixth, the counties of Bullock and Macon; twenty-seventh, the counties of Lee and Russell; twenty-eighth, the county of Montgomery; twenty-ninth, the counties of Cherokee and DeKalb; thirtieth, the counties of Dallas and Lowndes; thirty-first, the counties of Colbert, Franklin and Marion; thirty-second, the counties of Greene and Hale; thirty-third, the county of Mobile; thirty-fourth, the counties of Coosa, Clay and Cleburne; thirty-fifth, the counties of Henry and Houston. In districts consisting of more than one county, the senators shall not be elected for more than one term consecutively from any one county in the district, but shall reside in and be elected alternately and in turn from each of the counties within such district. The first senator to be elected in such district shall reside in the county having the largest population, except where that county had the last preceding senator. It is provided, however, that any senator in office on the effective date of this enactment shall be eligible to succeed himself as a member of the Senate, any other provision of this paragraph to the contrary notwithstanding.

Section 3. The house of representatives of the legislature shall consist of 106 members distributed among the several counties of the state as follows:

The county of Jefferson shall have and elect 12, the county of Mobile 6, and the county of Montgomery 4, the counties of Calhoun, Etowah, Madison and Tuscaloosa 3 each, the counties of Baldwin, Colbert, Cullman, Dallas, Houston, Lauderdale, Lee, Marshall, Morgan, Russell, Talladega and Walker 2 each, and the remaining counties 1 each.

Section 4. This Act shall take effect for the election of Senators and Representatives at the general election to be held in November, 1966, and shall be effective thereafter until the legislature is reapportioned according to law.

Section 5. The provisions of this Act are severable. If any part of this Act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

Also Sections 1 and 2 of Title 32 of the 1940 Code of Alabama which are as follows:

(1) House of Representatives. The house of representatives of the legislature consists of one hundred and six members, distributed among the several counties as follows: The counties of Autauga, Baldwin, Bibb, Blount, Cherokee, Chilton, Choctaw, Clay, Cleburne, Coffee, Colbert, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dale, DeKalb, Escambia, Fayette, Franklin, Geneva, Greene, Houston, Lamar, Lawrence, Limestone, Macon, Marion, Marshall, Monroe, Pickens, Ran-

dolph, Shelby, St. Clair, Washington and Winston shall each elect one representative. The counties of Barbour, Bullock, Butler, Calhoun, Chambers, Clarke, Elmore, Etowah, Hale, Henry, Jackson, Lauderdale, Lee, Lowndes, Madison, Marengo, Morgan, Perry, Pike, Russell, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker and Wilcox shall each elect two representatives. The counties of Dallas and Mobile shall each elect three representatives. The county of Montgomery shall elect four representatives; and the county of Jefferson shall elect seven representatives.

(2) Senatorial Districts. The senate of the legislature shall consist of thirty-five members, and the state is divided into thirty-five senatorial districts, as follows: First, Lauderdale and Limestone; second, Lawrence and Morgan; third, Blount, Cullman and Winston; fourth, Madison; fifth, Jackson and Marshall; sixth, Etowah and St. Clair; seventh, Calhoun; eighth, Talladega; ninth, Chambers and Randolph; tenth, Tallapoosa and Elmore; eleventh, Tuscaloosa; twelfth, Fayette, Lamar and Walker; thirteenth, Jefferson; fourteenth, Pickens and Sumter; fifteenth, Autauga, Chilton and Shelby; sixteenth, Lowndes; seventeenth, Butler, Conecuh, and Covington; eighteenth, Bibb and Perry; nineteenth, Choctaw, Clarke and Washington; twentieth, Marengo; twenty-first, Baldwin, Escambia and Monroe; twenty-second, Wilcox; twenty-third, Dale and Geneva; twenty-fourth, Barbour; twenty-fifth, Coffee, Crenshaw, and Pike; twenty-sixth, Bullock and Macon; twenty-seventh, Lee and Russell; twenty-eighth, Montgomery; twenty-ninth, Cherokee and DeKalb; thirtieth, Dallas; thirty-first, Colbert, Franklin

and Marion; thirty-second, Greene and Hale; thirty-third, Mobile; thirty-fourth, Clay, Cleburne and Coosa; thirty-fifth, Henry and Houston.

THE QUESTIONS PRESENTED FOR REVIEW.

1. Ought the three-judge District Court to have exercised jurisdiction in this cause?.

2. Does the Federal District Court have constitutional power to reapportion the Legislature of Alabama by affirmative action?

3. Does Article IV of the Constitution of the United States prohibit a Federal Court from asserting power and authority over a state legislature?

4. Was the apportionment of both Houses of the Legislature of the State of Alabama (which apportionment was pursuant to Article 9, §§ 202 and 203 of the Constitution of Alabama of 1901 and §§ 1 and 2, Title 32, Code of Alabama) "invidious discrimination" in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States?

5. Were the appellees in this cause denied the equal protection of the law accorded them by the Fourteenth Amendment to the Constitution of the United States by the failure of the Legislature to reapportion itself on a strictly population basis?

6. Is a "little federal system" in a state legislature constitutional, or must both the senate and house be apportioned strictly according to population?

7. Should the Court have declared invalid a proposed amendment to the Constitution of Alabama which by the act of the Legislature is to be submitted to the people of the state?

8. Is Act No. 93, Senate Bill 29, commonly referred to as the "67-Senator Amendment", proposing an amendment to the Constitution of Alabama relating to legislative apportionment as passed in the 1962 Special Session of the Legislature for the State of Alabama on July 12, 1962, an unconstitutional proposal within the meaning of the equal protection provisions of the Fourteenth Amendment to the Constitution of the United States?

9. Is the Act No. 91, House Bill 59, commonly referred to as the "Crawford-Webb Bill" passed in the 1962 Special Session of the Legislature and approved by the Governor of the State of Alabama, on July 12, 1962, an unconstitutional act within the meaning of the equal protection provisions of the Fourteenth Amendment to the Constitution of the United States?

10. How rapidly should the Courts move to remedy Legislature malapportionments?

STATEMENT OF THE CASE.

This suit was brought by M. O. Sims and others as voters and tax payers of the State of Alabama, on their behalf and others similarly situated against Bettye Frink, as Secretary of State of the State of Alabama, the sixty-seven Probate Judges of the State, including these Appellees, and other officials who were charged by law with performing and exercising certain duties and powers in connection with the nomination and election of the members of the Alabama Legislature. The suit alleged a denial of the equal protection of the law as preserved under the Fourteenth Amendment to the Constitution of the United States because of the failure of the Legislature of Alabama to reapportion legislative districts on the basis of population as provided by the State Constitution. R. 1.

From the decree rendered by the District Court decreeing certain statutes of the State of Alabama, relating to the reapportionment of the Legislature of Alabama to be unconstitutional and void, and reapportioning the Legislature of Alabama by judicial decree, and in ordering and enjoining these Appellees and the other defendants in said suit from taking any action that would hinder or obstruct the Court's decree in apportioning the Legislature, B. A. Reynolds, as Judge of Probate of Dallas County, Alabama, and Frank Pearce, as Judge of Probate of Marion County, Alabama, perfected a separate appeal to this Court, which is number 23 on the docket of the Court, and has been consolidated with this case for oral argument.

Briefs on behalf of Appellants (Appellees in this case) have been filed in this Court in case number 23 and a detailed statement of the case is contained in that brief.

While B. A. Reynolds as Judge of Probate of Dallas County, Alabama, and Frank Pearce as Judge of Probate of Marion County, Alabama, are technically Appellees in this case, they are Appellants in Case No. 23, and this cause should be reversed and remanded with directions to the District Court for the reasons set forth in the brief filed by Appellants in Case No. 23 and on the grounds hereinafter set forth in this brief.

SUMMARY OF ARGUMENT.

Legislative reapportionment should be resolved without federal interference. This Court should reconsider its decision in *Baker v. Carr*, 369 U. S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663, and return to the original constitutional proposition that courts do not interfere with the political structure of state governments.

Even under the decision of this Court in *Baker v. Carr*, the District Court should not have retained jurisdiction in this case, because the factual situation in the case at bar is different from the one considered in the Tennessee case. In Alabama the apportionment of the Legislature is based on a population rather than a voter basis and the number of seats in the House are limited to 106 and each one of the 67 counties of the state is entitled to at least one representative. The ap-

portionment of the State Senate is limited to 35 members and is divided into senatorial districts according to population and the Constitution provides that "no county shall be divided into two districts, and no district shall be made up of two or more counties not contiguous to each other".

Unlike the Tennessee case, while this suit was pending, the Alabama Legislature passed two acts—one of which was patterned after the Congress, was called the "67-Senator Act" and provided for a constitutional amendment by which each county of the state was to have one senator, and after providing for one member of the House for each county of the state as required under the Alabama Constitution, the remaining members of the House were to be apportioned on a population basis—the other act passed by the Legislature was called the "Crawford-Webb Act" and was to take effect in the event the proposed constitutional amendment was not passed by a vote of the people of the state.

Neither one of said acts were invidious *per se*, but were based on rational state policy. Both of said acts were valid and constitutional acts of the Legislature and should not have been declared unconstitutional by the District Court.

In no event should the District Court have reapportioned the Legislature by affirmative action.

ARGUMENT.

The suit in this case is patterned after the suit brought by the voters of the State of Tennessee and decided by this Court in *Baker v. Carr*, 82 S. Ct. 691. In the Tennessee case the plaintiffs, as in this case, claim that they were denied the equal protection of the law accorded them by the 14th Amendment of the Constitution of the United States by virtue of the debasement of their vote. A three judge district court dismissed the complaint and held it lacked jurisdiction of the subject matter. On appeal in *Baker v. Carr, supra*, this court reversed the case and merely held: "(a) that the court possessed jurisdiction of the subject matter; (b) that a justiciable cause of action is stated upon which appellants would be entitled to appropriate relief; and (c) * * * that the appellants have standing to challenge the Tennessee Apportionment Statutes". Mr. Justice Frankfurter and Mr. Justice Harlan dissented and wrote separate opinions. The District Court of Tennessee did not reach the merits of that claim and the Supreme Court expressed no view on the merits. Prior to *Baker v. Carr, supra*, the Supreme Court had consistently ruled that apportionment of congress or state legislatures was a political question and refused to assume jurisdiction in such cases. Illustrative of this are the cases of *Colegrove v. Green*, 328 U.S. 549, 66 S. Ct. 1198, 90 L. Ed. 1432; *MacDougall v. Green*, 335 U.S. 281, 69 S. Ct. 1, 93 L. Ed. 3; *South v. Peters*, 339 U.S. 276, 70 S. Ct. 641; 94 L. Ed. 834.

That the legislative powers of the people can be organized according to the dictates of a federal judiciary is in violation of the doctrine that the government shall be composed of the executive, legislative and judicial branches, each of whom should exercise separate, but equal, powers. A federal judiciary that can dictate the organization of a state legislature can indirectly dictate the organization of the United States Congress because seats in its House of Representatives are districted and redistricted by act of state legislature. Legislative reapportionment should be resolved without federal interference.

The case at bar is illustrative of the confusion which can result from interference by the federal judiciary following the decision in *Baker v. Carr, supra.*

The soundness of the majority opinion in *Baker v. Carr,* has been questioned by members of the bar, courts and students of government and for that reason we urge the court to reconsider its decision in that case and return to the original constitutional proposition that courts do not interfere with the political structure of state government.

Even under the decision in *Baker v. Carr,* the district court should not have retained jurisdiction in this case because the factual situation in the case at bar is different from the one considered in the Tennessee case in the following respects:

Under the Tennessee Constitution, (Secs. 5 & 6) the apportionment of the house and senate was to make

among the several counties or districts according to the number of qualified voters in each. In Alabama the apportionment of the legislature is based on a population rather than a voter basis, and the number of seats in the house are limited to 106 and each one of the 67 counties of the state is entitled to at least one representative. Sections 197, 198 and 199 Alabama Constitution 1901. The apportionment of the state senate is limited to 35 senators and is divided into senatorial districts according to population and the constitution provides that "no county shall be divided into two districts, and no district shall be made up of two or more counties not contiguous to each other." Sec. 200 of the Constitution of Alabama 1901.

Unlike the Tennessee Legislature which had not acted on reapportionment since the year, 1901, the Alabama Legislature while this suit was pending in an extraordinary session called by the Governor passed two acts, one of which was Act Number 93, Senate Bill 29, commonly referred to as the "67-Senator Amendment". This act proposed an amendment to the Constitution of Alabama relating to legislative apportionment which was to be submitted to a vote of the people and was declared by the lower Court to be an unconstitutional proposal within the meaning of the Equal Protection Provisions of the Fourteenth Amendment to the Constitution of the United States. The other act being Act Number 91, House Bill 59, commonly referred to as the "Crawford-Webb Bill", was likewise declared by the District Court to be an

unconstitutional act within the meaning of the Equal Protection Clause of the Constitution.

Both of said acts were declared to be, "void, invalid, and ineffective" to the extent that they attempt to correct the denial of plaintiffs' rights, said denial arising from the debasement of plaintiffs' votes in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. While the Court declared both of the aforesaid acts unconstitutional, in our opinion both of said acts were constitutional and valid reapportionment acts of the Legislature as we will subsequently point out in this brief.

After declaring said acts unconstitutional, the lower Court then assumed the duties of the Legislature, mapped the political structure of the state, and apportioned the Legislature by Judicial Decree according to its own views, all of which was hurriedly done in a period of some thirteen days.

The District Court's Decree reapportioning the Legislature was entered subsequent to the Democratic Primary in May and prior to the General Election to be held in November, 1962.

In *Baker v. Carr*, the District Court was not called on to "re-map" the state, or to hurriedly provide relief in the face of an impending election, and in that case appellants suggested a step-by-step approach, which did not involve an assumption by the District Court of legislative duties or responsibilities. (Taken from page 20 of appellant's brief in *Baker v. Carr.)*

Should the Court have declared invalid a proposed amendment to the Constitution of Alabama which by the act of the legislature was to be submitted to a vote of the people of the state?

The proposed 67-Senator Act which was to be submitted to a vote of the people of the state was framed after the Federal System of government—namely one senator in each county of the state. The District Court in its decree accepted as completely satisfactory the provisions of this act as it relates to House reapportionment by the method of equal proportion. We will therefore discuss the merit of the 67-Senator Amendment as it relates to senatorial redistricting.

It is at once essential to recognize the basic issue involved here. It relates solely to the right of a state to structure its Legislature in accordance with provisions which it considers in the best interest of the state at large.

In declaring the proposed 67-Senator Amendment invalid, the District Court concluded as a matter of law that the people of this state cannot by Constitutional amendment or by Constitutional convention alter the basic structure of its Legislature. If unit representation in the Senate is invidious *per se*, then it would be futile to resort to convention to so provide.

In at least nine states today county or town units are given equal representation in the Legislative branch regardless of the number of each unit's inhabitants.

Among fourteen states it is required that there be one Senator for each district or else limit a district to one Senator.

There are twenty states in which each county or town unit is entitled to one representative in the Lower House. See Appendix "1" *infra* at page 31.

If the 67-Senate provision is not invidious *per se*, can it be said that it is invidious as being based on no rational policy? In this connection we would point out that there is nothing in the Federal Constitution to prevent a state acting not irrationally from choosing any electoral Legislative structure it thinks best suited to the interest, temper, and customs of its people: *MacDougall v. Green*, 335 U. S. 281, in which the Court observed that to "assume that political power is a function exclusively of numbers is to disregard the practicalities of government, and reaffirmed by *South v. Peters*, 339 U. S. 276.

It may be said that it results in gross inequality but even gross inequality may be justified if based upon a permissible state policy and is not arbitrarily and capriciously applied.

If it can be determined that the 67-Senate Amendment rests upon a permissible policy the function of the Federal judiciary ends upon such determination. We refer to Appendix 3 indicating the manner in which seven counties characterized by industrialization and fifty per cent or better of their population is repre-

sented by single or contiguous cities. It is submitted that such concentration of Legislative power into the hands of the industrial community of this state to the extent of forty-one representatives represents a potential power of control in the House of Representatives such as to prevent submission of Constitutional amendments to the people. The power thus represented when exercised as a "stranglehold" can be sufficiently disruptive and obstructive as to prevent, if not in fact control, the distribution of revenues and the removal of agricultural tax exemptions to the detriment of all the people of Alabama.

Unless the people of Alabama are permitted to structure their Legislature in a manner to provide protection from the domination of a handful of cities, then the Court has as a matter of law asserted final authority and control over matters which properly should remain for Legislative and not judicial determination.

The Supreme Court of Alabama in Opinion of Justices 61 So. 2d 881, (1955), by a divided Court, held that notwithstanding the provisions of 284 of the Constitution the people could "legally and lawfully remove any provision from the Constitution which they previously put in or ratified, even to the extent of amending or repealing one of the sections comprising our Declaration of Rights, even though it is provided that they 'shall forever remain inviolate.'"

It is respectively submitted that the 67-Senator Act was a valid and constitutional act of the Legislature and should be submitted to a vote of the people.

Should the District Court have declared unconstitutional the Crawford-Webb Act of the Legislature?

With *Baker v. Carr* in mind, let us now examine the method of apportionment of the Alabama Legislature employed in this act.

It will be observed by reference to Appendix "2" *infra* at page 33, that the House apportionment provided by the Crawford-Webb Act is the method of smallest divisors with this minor exception two seats, which would ordinarily be apportioned to Jefferson County and one seat which would ordinarily be apportioned to Mobile County, have instead been apportioned one each to Russell, Cullman and Colbert Counties.

While the method of apportionment employed in the Crawford-Webb Act is not stated in the act, nor need it have been so stated, it is nevertheless obvious. The classifications used were reasonable, logical, rational and were designed to carry out unquestioned state policy of allocating State Legislative power in a manner to prevent unwholesome concentration of power. The population classifications upon which the Crawford-Webb Act is based, are as follows:

After providing one representative to each county, as provided for in the Constitution, the balance of thirty-nine House seats were apportioned according to population by classification:

Counties 45,000— 90,000	1 additional seat
Counties 90,000—150,000	2 additional seats
Counties 150,000—300,000	3 additional seats
Counties 300,000—600,000	5 additional seats
Counties 600,000 and over	11 additional seats

An apportionment based on the method of smallest divisors is an apportionment by known and accepted standards and even though biased in favor of small counties, such bias is consistent with and in furtherance of unquestioned state policy. This policy is clearly indicated by the separate provision of the Alabama Constitution designed to protect the small counties by the original apportionment of one to each county and by the additional provision of the Constitution limiting one county to a single Senatorial district.

Disparities in population as may appear are inherent in any and all mathematical methods of apportionment. The question is the degree of disparity and whether or not such disparity can be justified on the basis of state policy, and thus avoid the onus of invidiousness.

The minor deviations in the Crawford-Webb Act from an apportionment under the method of smallest divisors is justified and equitable and based upon legislative judgment concerning the best method of guaranteeing protection against concentration of political power in the Alabama Legislature.

Many states are apportioned under provisions which put definite limitations upon the number of Representatives, of Senators, as the case may be, from any one political unit. We refer the Court to the dissenting opinion of Justice Frankfurter in *Baker v. Carr*, in which a tabulation is made from the *Book of the States 1962-63* of apportionment methods previously employed throughout the United States.

What is involved in this suit is an abstract question of political power concerning the structure and organization of the Alabama Legislature. It would be utterly impossible to argue the wisdom of the state policy with respect to allocation of power without making of the Court a forum for political debate.

Test for Invidiousness.

While the United States Supreme Court may not have established guide lines in some respects, it seems to us that it did speak clearly in *Baker v. Carr* on the following points:

1. That gross population variations are not invidious *per se*.

2. That such discriminations are not invidious if they can be shown to conform to a rational state policy designed to protect the rural interests of the state from domination by other segments of the economy.

3. That to constitute "invidiousness" any discrimination based on population must equate "no policy" or else be totally irrational as to defy any conceivable state of facts upon which to justify the discrimination.

It is respectively submitted that when the above test is applied the Crawford-Webb Act was a valid and constitutional act of the Legislature and should not have been declared unconstitutional by the District Court.

The District Court was not justified in apportioning the legislature of Alabama by judicial decree. As

stated by Mr. Justice Frankfurter in his dissenting opinion in *Baker v. Carr*, 82 S. Ct. 691 (1962):

> "In all of the apportionment cases which have come before the Court, a consideration which has been weighty in determining their non-justiciability has been the difficulty or impossibility of devising effective judicial remedies in this class of case. An injunction restraining a general election unless the legislature reapportions would paralyze the critical centers of a State's political system and threaten political dislocation whose consequences are not foreseeable. A declaration devoid of implied compulsion of injunctive or other relief would be an idle threat. Surely a Federal District Court could not itself remap the State: the same complexities which impede effective judicial review of apportionment a fortiori make impossible a court's consideration of these imponderables as an original matter. And the choice of elections at large as opposed to elections by district, however unequal the districts, is a matter of sweeping political judgment having enormous political implications, the nature and reach of which are certainly beyond the informed understanding of, and capacity for appraisal by, courts. - - -
>
> "Although the District Court had jurisdiction in the very restricted sense of power to determine whether it could adjudicate the claim, the case is of that class of political controversy which, by the nature of its subject, is unfit for federal judicial action."

CONCLUSION.

Many questions are presented in this case which were not considered by the Court in *Baker v. Carr*. More is involved here than the rights of parties litigant. The very foundation of state government is at stake. If this decision is allowed to stand, then the State of Alabama and its sister states are not sovereign states.

It is therefore respectfully submitted that this Court should reconsider the decision in *Baker v. Carr* and should return to the original constitutional proposition that courts do not interfere with the political structure of states government; that this Court should determine and decree that the District Court did not have power or authority to reapportion the Legislature of Alabama, or if it did have such power the Court was not justified in apportioning the Legislature of Alabama by judicial decree; that the "67-Senator Act" and the "Crawford-Webb Act" were valid and constitutional acts of the Alabama Legislature; and that a justiciable controversy did not exist between the appellants and the appellees in this case, and the case should have been dismissed by the District Court.

It is respectfully submitted that this case should be reversed and remanded to the District Court with directions that the judgment be vacated and the case be dismissed; and, that an election be held in accordance with the existing laws of the State of Alabama for members of the Legislature in accordance with the Statutes of that state as they existed prior to the

judgment of the District Court in this case, upon call by the Governor of Alabama.

Respectfully submitted,

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I, Joseph E. Wilkinson, Jr., one of the attorneys for the Appellees, B. A. Reynolds, as Judge of Probate of Dallas County, Alabama, and Frank Pearce, as Judge of Probate of Marion County, Alabama, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 19th day of September, 1963, I served copies of the foregoing brief on the several Appellees and Cross-Appellants, by mailing copies in duly addressed envelopes, with first class postage, prepaid, to their respectiye attorneys of record as follows:

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APPENDIX No. 1.

TABLE OF STATES

APPORTIONED UNDER PROVISIONS REQUIRING ONE SENATOR PER DISTRICT OR LIMITING A SENATORIAL DISTRICT TO ONE SENATOR

AUTHORITY: **BOOK OF THE STATES 1962-63**

Alabama

California

Connecticut

Florida

Georgia

Idaho

Iowa

Montana

Nevada

New Jersey

New Mexico

South Carolina

Texas

Vermont

Wyoming

TABLE OF STATES

REQUIRING HOUSE REPRESENTATION OF NOT LESS THAN ONE PER COUNTY

AUTHORITY: **BOOK OF THE STATES 1962-63**

Alabama	New Mexico
Arkansas	New York
Hawaii	North Carolina
Idaho	North Dakota
Iowa	Ohio
Kansas	Pennsylvania
Mississippi	South Carolina
Missouri	Utah
Montana	West Virginia
New Jersey	Wyoming

APPENDIX No. 2.

COMPARISON: HOUSE APPORTIONMENT UNDER PROVISIONS OF ACT No. 91; METHOD OF EQUAL PROPORTIONS; AND METHOD OF SMALLEST DIVISORS

County	Crawford-Webb Act, Act 91	SDM	EPM
Jefferson	12	14	17
Mobile	6	7	8
Montgomery	4	4	4
Calhoun	3	3	3
Etowah	3	3	3
Madison	3	3	3
Tuscaloosa	3	3	3
Baldwin	2	2	1
Colbert	2	1	1
Cullman	2	1	1
Dallas	2	2	2
Houston	2	2	1
Lauderdale	2	2	2
Lee	2	2	1
Marshall	2	2	1
Morgan	2	2	2
Russell	2	1	1
Talladega	2	2	2
Walker	2	2	2

Balance of counties one each under all apportionment methods.

APPENDIX No. 3.

TABLE OF TEN INDUSTRIAL COUNTIES SHOWING CITY POPULATION AS PER CENT OF TOTAL COUNTY POPULATION

County	City	Population	Co. Pop.	% Rounded of Total Pop.
Jefferson	Birmingham	340,887	634,864	54%
Mobile	Mobile	202,779	314,301	64%
Montgomery	Montgomery	134,393	169,210	79%
Madison	Huntsville	72,365	117,348	61%
Tuscaloosa	Tuscaloosa	63,370	109,047	58%
Etowah	Gadsden	58,088	96,980	59%
Calhoun			95,878	39%
	(Oxford	3,603		
contiguous	(			
	(Anniston	33,657		
		37,260		
(Boundaries extended since census to increase population of Oxford)				
Lauderdale			61,622	
Colbert			46,506	
			108,128	
	(Florence	31,649		
contiguous	(Sheffield	13,499		
	(Tuscumbia	8,994		
		54,142		50%
Morgan	Decatur	29,217	60,454	

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No. 41.

JOHN W. McCONNELL, JR., ET AL.,
Appellants-Intervenors,

versus

BETTYE FRINK, Secretary of State of the State of Alabama; B. A. REYNOLDS, Judge of Probate of Dallas County, Alabama; FRANK PEARCE, Judge of Probate of Marion County, Alabama; et al.,
Appellees-Defendants.

On Appeal from the United States District Court for the Middle District of Alabama, Northern Division.

BRIEF FOR APPELLEES, B. A. REYNOLDS AS JUDGE OF PROBATE OF DALLAS COUNTY, ALABAMA, AND FRANK PEARCE AS JUDGE OF PROBATE OF MARION COUNTY, ALABAMA.

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

In addition to the Alabama constitutional and statutory provisions incorporated in Appellants' brief, the following other Alabama constitutional provisions and statutes are involved in this case:

Art. 9, Sec. 201. Should any decennial census of the United States not be taken, or if when taken, the same, as to this state, be not full and satis-

factory, the Legislature shall have power at its first session after the time shall have elapsed for the taking of said census, to provide for an enumeration of all the inhabitants of this State, upon which it shall be the duty of the Legislature to make the apportionment of Representatives and Senators as provided for in this article. Vol. 1, p. 203, Code of Alabama 1940.

Art. 9, Sec. 202. Until the legislature shall make an apportionment of representatives among the several counties, as provided in the preceding section, the counties of Autauga, Baldwin, Bibb, Blount, Cherokee, Chilton, Choctaw, Clay, Cleburne, Coffee, Colbert, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dale, DeKalb, Escambia, Fayette, Franklin, Geneva, Greene, Lamar, Lawrence, Limestone, Macon, Marion, Marshall, Monroe, Pickens, Randolph, St. Clair, Shelby, Washington, and Winston, shall each have one representative; the counties of Barbour, Bullock, Butler, Calhoun, Chambers, Clarke, Elmore, Etowah, Hale, Henry, Jackson, Lauderdale, Lee, Lowndes, Madison, Marengo, Morgan, Perry, Pike, Russell, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, and Wilcox, shall each have two representatives; the counties of Dallas and Mobile shall each have three representatives; the county of Montgomery shall have four representatives; and the county of Jefferson shall have seven representatives. Vol. 1, p. 203, Code of Alabama 1940.

Sec. 203. Until the legislature shall divide the state into senatorial districts, as herein provided, the senatorial districts shall be as follows:

First district, Lauderdale and Limestone; second district, Lawrence and Morgan; third district, Blount, Cullman, and Winston; fourth district, Madison; fifth district, Jackson and Marshall; sixth district, Etowah and St. Clair; seventh district, Calhoun; eighth district, Talladega; ninth district, Chambers and Randolph; tenth district, Tallapoosa and Elmore; eleventh district, Tuscaloosa; twelfth district, Fayette, Lamar and Walker; thirteenth district, Jefferson; fourteenth district, Pickens and Sumter; fifteenth district, Autauga, Chilton, and Shelby; sixteenth district, Lowndes; seventeenth district, Butler, Conecuh, and Covington; eighteenth district, Bibb and Perry; nineteenth district, Choctaw, Clarke, and Washington; twentieth district, Marengo; twenty-first district, Baldwin, Escambia, and Monroe; twenty-second district, Wilcox; twenty-third district, Dale and Geneva; twenty-fourth district, Barbour; twenty-fifth district, Coffee, Crenshaw, and Pike; twenty-sixth district, Bullock and Macon; twenty-seventh district, Lee and Russell; twenty-eighth district, Montgomery; twenty-ninth district, Cherokee and DeKalb; thirtieth district, Dallas; thirty-first district, Colbert, Franklin, and Marion; thirty-second district, Greene and Hale; thirty-third district, Mobile; thirty-fourth district, Cleburne, Clay, and Coosa; thirty-fifth district, Henry.

Art. 18, Sec. 284 . . . Representation in the Legislature shall be based upon population, and such basis of representation shall not be changed by constitutional amendment. Vol. 1, p. 287, Code of Alabama 1940.

Sections 42 and 43 of Art. 3 of the Constitution of 1901 and Section 44 of Art. 4 read as follows:

> Section 42. The powers of the government of the State of Alabama shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to-wit: Those which are legislative, to one; those which are executive, to another; and those which are judicial, to another. Vol. 1, p. 88, Code of Alabama 1940.
>
> Section 43. In the government of this state, except in the instances in this Constitution hereinafter expressly directed or permitted, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end that it may be a government of laws and not of men. Vol. 1, p. 91, Code of Alabama 1940.
>
> Section 44. The legislative power of this state shall be vested in a legislature, which shall consist of a senate and a house of representatives. Vol. 1, p. 92, Code of Alabama 1940.

The following statutes were declared unconstitutional in this suit:

Act Number 93, Senate Bill 29, commonly referred to as the "67-Senator Amendment" proposing an amendment to the Constitution of Alabama relating to Legislative apportionment as passed in the 1962 Special Ses-

sion of the Legislature of Alabama, (Acts of Alabama, Special Session 1962, p. 124) which reads as follows:

> An Act, proposing an amendment to the Constitution of Alabama relating to legislative apportionment. BE IT ENACTED BY THE LEGISLATURE OF ALABAMA: Section 1. The following amendment to the Constitution of Alabama 1901 is proposed and shall become valid as a part thereof when approved and proclaimed as prescribed by law: Proposed Amendment 1. The legislature of Alabama shall consist of a senator for each county and 106 members of the house of representatives, to be apportioned among the several counties as herein prescribed; provided, that in addition to the above number of representatives each new county hereafter created shall be entitled to at least one representative. 2. At the general election in 1966, and every four years thereafter, a senator shall be elected by the qualified electors of each county in the state. 3. At the general election in 1966, and every four years thereafter, until the house of representatives is reapportioned as herein provided, the qualified electors of each county in the state shall elect such number of representatives as may be apportioned to the county as follows: The County of Jefferson shall have and elect seventeen representatives; the county of Mobile shall have and elect eight representatives; the County of Montgomery shall have and elect four representatives; the counties of Calhoun, Etowah, Madison and Tuscaloosa shall each have and elect three representatives; the counties of Dallas, Lauderdale, Morgan, Talladega and Walker shall each have and elect two representatives; and the remaining counties of the state shall each have and

elect one representative. 4. On the first day, or within one week thereafter, of the regular session of the legislature in 1971, and every fifth regular session thereafter, the clerk of the house of representatives shall transmit to the secretary of state a statement showing the whole number of persons in each county under the most recent decennial census of the United States, and the number of representatives to which each county will be entitled under an apportionment of the then existing number of representatives by the method known as the method of equal proportions, no county to receive less than one representative. 5. In Section 284 of this Constitution as amended, strike out the last sentence thereof and insert the following sentence: Representation in the house of representatives of the legislature shall be based upon population. 6. Article IX (sections 197-203) of this Constitution is hereby expressly repealed. Section 2. An election upon the proposed amendment is ordered to be held on the date of the general election next succeeding the final adjournment of the current session of the Legislature. The election shall be held in accordance with the provisions of Sections 284 and 285 of the Constitution of Alabama, as amended, and Chapter 1, Article 18, Title 17 of the Code of Alabama 1940. Section 3. Notice of the election and of the proposed amendment shall be given by proclamation of the Governor, which proclamation shall be published once a week for four successive weeks next preceding the day appointed for the election in a newspaper in each county of the State. In every county in which no newspaper is published, a copy of the notice shall be posted at each courthouse and post office.

Act Number 91, House Bill 59, commonly referred to as the "Crawford-Webb Bill" passed in the 1962 Special Session of the Legislature of Alabama (Acts of Alabama, Special Session 1962, p. 121) and approved by the Governor of the State of Alabama on July 12th, 1962 is as follows:

> An Act, to fix the number of senators and representatives in the legislature, divide the state into senatorial districts, and apportion the senators and representatives among the several districts and counties.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

> Section 1. The senate of the legislature shall be composed of 35 senators representing 35 senatorial districts, each district to elect one senator and no more.
>
> Section 2. The state is hereby divided into 35 senatorial districts as follows:
>
> First, the counties of Lauderdale and Limestone; second, the counties of Lawrence and Morgan; third, the counties of Cullman and Winston; fourth, the county of Madison; fifth, the counties of Jackson and Marshall; sixth, the county of Etowah; seventh, the county of Calhoun; eighth, the county of Talladega; ninth, the counties of Randolph and Chambers; tenth, the counties of Elmore and Tallapoosa; eleventh, the county of Tuscaloosa; twelfth, the counties of Fayette and Walker; thirteenth, the county of Jefferson; fourteenth, the counties of Pickens and Lamar; fifteenth, the counties of Autauga, Chilton and Shelby; sixteenth, the counties

of Monroe and Wilcox; seventeenth, the counties of Butler, Covington and Conecuh; eighteenth, the counties of Bibb and Perry; nineteenth, the counties of Clarke, Choctaw and Washington; twentieth, the counties of Marengo and Sumter; twenty-first, the counties of Baldwin and Escambia; twenty-second, the counties of Blount and St. Clair; twenty-third, the counties of Dale and Geneva; twenty-fourth, the counties of Barbour and Pike; twenty-fifth, the counties of Coffee and Crenshaw; twenty-sixth, the counties of Bullock and Macon; twenty-seventh, the counties of Lee and Russell; twenty-eighth, the county of Montgomery; twenty-ninth, the counties of Cherokee and DeKalb; thirtieth, the counties of Dallas and Lowndes; thirty-first, the counties of Colbert, Franklin and Marion; thirty-second, the counties of Greene and Hale; thirty-third, the county of Mobile; thirty-fourth, the counties of Coosa, Clay and Cleburne; thirty-fifth, the counties of Henry and Houston. In districts consisting of more than one county, the senators shall not be elected for more than one term consecutively from any one county in the district, but shall reside in and be elected alternately and in turn from each of the counties within such district. The first senator to be elected in such district shall reside in the county having the largest population, except where that county had the last preceding senator. It is provided, however, that any senator in office on the effective date of this enactment shall be eligible to succeed himself as a member of the Senate, any other provision of this paragraph to the contrary notwithstanding.

Section 3. The house of representatives of the legislature shall consist of 106 members distributed among the several counties of the state as follows:

The county of Jefferson shall have and elect 12, the county of Mobile 6, and the county of Montgomery 4, the counties of Calhoun, Etowah, Madison and Tuscaloosa 3 each, the counties of Baldwin, Colbert, Cullman, Dallas, Houston, Lauderdale, Lee, Marshall, Morgan, Russell, Talladega and Walker 2 each, and the remaining counties 1 each.

Section 4. This Act shall take effect for the election of Senators and Representatives at the general election to be held in November, 1966, and shall be effective thereafter until the legislature is reapportioned according to law.

Section 5. The provisions of this Act are severable. If any part of this Act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

Also Sections 1 and 2 of Title 32 of the 1940 Code of Alabama which are as follows:

(1) House of Representatives. The house of representatives of the legislature consists of one hundred and six members, distributed among the several counties as follows: The counties of Autauga, Baldwin, Bibb, Blount, Cherokee, Chilton, Choctaw, Clay, Cleburne, Coffee, Colbert, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dale, DeKalb, Escambia, Fayette, Franklin, Geneva, Greene, Houston, Lamar, Lawrence, Limestone, Macon, Marion, Marshall, Monroe, Pickens, Ran-

dolph, Shelby, St. Clair, Washington and Winston shall each elect one representative. The counties of Barbour, Bullock, Butler, Calhoun, Chambers, Clarke, Elmore, Etowah, Hale, Henry, Jackson, Lauderdale, Lee, Lowndes, Madison, Marengo, Morgan, Perry, Pike, Russell, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker and Wilcox shall each elect two representatives. The counties of Dallas and Mobile shall each elect three representatives. The county of Montgomery shall elect four representatives; and the county of Jefferson shall elect seven representatives.

(2) Senatorial Districts. The senate of the legislature shall consist of thirty-five members, and the state is divided into thirty-five senatorial districts, as follows: First, Lauderdale and Limestone; second, Lawrence and Morgan; third, Blount, Cullman and Winston; fourth, Madison; fifth, Jackson and Marshall; sixth, Etowah and St. Clair; seventh, Calhoun; eighth, Talladega; ninth, Chambers and Randolph; tenth, Tallapoosa and Elmore; eleventh, Tuscaloosa; twelfth, Fayette, Lamar and Walker; thirteenth, Jefferson; fourteenth, Pickens and Sumter; fifteenth, Autauga, Chilton and Shelby; sixteenth, Lowndes; seventeenth, Butler, Conecuh, and Covington; eighteenth, Bibb and Perry; nineteenth, Choctaw, Clarke and Washington; twentieth, Marengo; twenty-first, Baldwin, Escambia and Monroe; twenty-second, Wilcox; twenty-third, Dale and Geneva; twenty-fourth, Barbour; twenty-fifth, Coffee, Crenshaw, and Pike; twenty-sixth, Bullock and Macon; twenty-seventh, Lee and Russell; twenty-eighth, Montgomery; twenty-ninth, Cherokee and DeKalb; thirtieth, Dallas; thirty-first, Colbert, Franklin

and Marion; thirty-second, Greene and Hale; thirty-third, Mobile; thirty-fourth, Clay, Cleburne and Coosa; thirty-fifth, Henry and Houston.

THE QUESTIONS PRESENTED FOR REVIEW.

1. Ought the three-judge District Court to have exercised jurisdiction in this cause?

2. Does the Federal District Court have constitutional power to reapportion the Legislature of Alabama by affirmative action?

3. Does Article IV of the Constitution of the United States prohibit a Federal Court from asserting power and authority over a state legislature?

4. Was the apportionment of both Houses of the Legislature of the State of Alabama (which apportionment was pursuant to Article 9, §§ 202 and 203 of the Constitution of Alabama of 1901 and §§ 1 and 2, Title 32, Code of Alabama) "invidious discrimination" in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States?

5. Were the appellees in this cause denied the equal protection of the law accorded them by the Fourteenth Amendment to the Constitution of the United States by the failure of the Legislature to reapportion itself on a strictly population basis?

6. Is a "little federal system" in a state legislature constitutional, or must both the senate and house be apportioned strictly according to population?

7. Should the Court have declared invalid a proposed amendment to the Constitution of Alabama which by the act of the Legislature is to be submitted to the people of the state?

8. Is Act No. 93, Senate Bill 29, commonly referred to as the "67-Senator Amendment", proposing an amendment to the Constitution of Alabama relating to legislative apportionment as passed in the 1962 Special Session of the Legislature for the State of Alabama on July 12, 1962, an unconstitutional proposal within the meaning of the equal protection provisions of the Fourteenth Amendment to the Constitution of the United States?

9. Is the Act No. 91, House Bill 59, commonly referred to as the "Crawford-Webb Bill" passed in the 1962 Special Session of the Legislature and approved by the Governor of the State of Alabama, on July 12, 1962, an unconstitutional act within the meaning of the equal protection provisions of the Fourteenth Amendment to the Constitution of the United States?

10. How rapidly should the Courts move to remedy Legislature malapportionments?

STATEMENT OF THE CASE.

This suit was brought by M. O. Sims and others as voters and tax payers of the State of Alabama, on their behalf and others similarly situated against Bettye Frink, as Secretary of State of the State of Alabama, the sixty-seven Probate Judges of the State, including these Appellees, and other officials who were charged by law with performing and exercising certain duties and powers in connection with the nomination and election of the members of the Alabama Legislature. The suit alleged a denial of the equal protection of the law as preserved under the Fourteenth Amendment to the Constitution of the United States because of the failure of the Legislature of Alabama to reapportion legislative districts on the basis of population as provided by the State Constitution. R. 1.

From the decree rendered by the District Court decreeing certain statutes of the State of Alabama, relating to the reapportionment of the Legislature of Alabama to be unconstitutional and void, and reapportioning the Legislature of Alabama by judicial decree, and in ordering and enjoining these Appellees and the other defendants in said suit from taking any action that would hinder or obstruct the Court's decree in apportioning the Legislature, B. A. Reynolds, as Judge of Probate of Dallas County, Alabama, and Frank Pearce, as Judge of Probate of Marion County, Alabama, perfected a separate appeal to this Court, which is number 23 on the docket of the Court, and has been consolidated with this case for oral argument.

Briefs on behalf of Appellants (Appellees in this case) have been filed in this Court in case number 23 and a detailed statement of the case is contained in that brief.

While B. A. Reynolds as Judge of Probate of Dallas County, Alabama, and Frank Pearce as Judge of Probate of Marion County, Alabama, are technically Appellees in this case, they are Appellants in Case No. 23, and this cause should be reversed and remanded with directions to the District Court for the reasons set forth in the brief filed by Appellants in Case No. 23 and on the grounds hereinafter set forth in this brief.

SUMMARY OF ARGUMENT.

Legislative reapportionment should be resolved without federal interference. This Court should reconsider its decision in *Baker v. Carr*, 369 U. S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663, and return to the original constitutional proposition that courts do not interfere with the political structure of state governments.

Even under the decision of this Court in *Baker v. Carr*, the District Court should not have retained jurisdiction in this case, because the factual situation in the case at bar is different from the one considered in the Tennessee case. In Alabama the apportionment of the Legislature is based on a population rather than a voter basis and the number of seats in the House are limited to 106 and each one of the 67 counties of the state is entitled to at least one representative. The ap-

portionment of the State Senate is limited to 35 members and is divided into senatorial districts according to population and the Constitution provides that "no county shall be divided into two districts, and no district shall be made up of two or more counties not contiguous to each other".

Unlike the Tennessee case, while this suit was pending, the Alabama Legislature passed two acts—one of which was patterned after the Congress, was called the "67-Senator Act" and provided for a constitutional amendment by which each county of the state was to have one senator, and after providing for one member of the House for each county of the state as required under the Alabama Constitution, the remaining members of the House were to be apportioned on a population basis—the other act passed by the Legislature was called the "Crawford-Webb Act" and was to take effect in the event the proposed constitutional amendment was not passed by a vote of the people of the state.

Neither one of said acts were invidious *per se*, but were based on rational state policy. Both of said acts were valid and constitutional acts of the Legislature and should not have been declared unconstitutional by the District Court.

In no event should the District Court have reapportioned the Legislature by affirmative action.

ARGUMENT.

The suit in this case is patterned after the suit brought by the voters of the State of Tennessee and decided by this Court in *Baker v. Carr*, 82 S. Ct. 691. In the Tennessee case the plaintiffs, as in this case, claim that they were denied the equal protection of the law accorded them by the 14th Amendment of the Constitution of the United States by virtue of the debasement of their vote. A three judge district court dismissed the complaint and held it lacked jurisdiction of the subject matter. On appeal in *Baker v. Carr, supra*, this court reversed the case and merely held: "(a) that the court possessed jurisdiction of the subject matter; (b) that a justiciable cause of action is stated upon which appellants would be entitled to appropriate relief; and (c) * * * that the appellants have standing to challenge the Tennessee Apportionment Statutes". Mr. Justice Frankfurter and Mr. Justice Harlan dissented and wrote separate opinions. The District Court of Tennessee did not reach the merits of that claim and the Supreme Court expressed no view on the merits. Prior to *Baker v. Carr, supra*, the Supreme Court had consistently ruled that apportionment of congress or state legislatures was a political question and refused to assume jurisdiction in such cases. Illustrative of this are the cases of *Colegrove v. Green*, 328 U.S. 549, 66 S. Ct. 1198, 90 L. Ed. 1432; *MacDougall v. Green*, 335 U.S. 281, 69 S. Ct. 1, 93 L. Ed. 3; *South v. Peters*, 339 U.S. 276, 70 S. Ct. 641, 94 L. Ed. 834.

That the legislative powers of the people can be organized according to the dictates of a federal judiciary is in violation of the doctrine that the government shall be composed of the executive, legislative and judicial branches, each of whom should exercise separate, but equal, powers. A federal judiciary that can dictate the organization of a state legislature can indirectly dictate the organization of the United States Congress because seats in its House of Representatives are districted and redistricted by act of state legislature. Legislative reapportionment should be resolved without federal interference.

The case at bar is illustrative of the confusion which can result from interference by the federal judiciary following the decision in *Baker v. Carr, supra.*

The soundness of the majority opinion in *Baker v. Carr,* has been questioned by members of the bar, courts and students of government and for that reason we urge the court to reconsider its decision in that case and return to the original constitutional proposition that courts do not interfere with the political structure of state government.

Even under the decision in *Baker v. Carr,* the district court should not have retained jurisdiction in this case because the factual situation in the case at bar is different from the one considered in the Tennessee case in the following respects:

Under the Tennessee Constitution, (Secs. 5 & 6) the apportionment of the house and senate was to make

among the several counties or districts according to the number of qualified voters in each. In Alabama the apportionment of the legislature is based on a population rather than a voter basis, and the number of seats in the house are limited to 106 and each one of the 67 counties of the state is entitled to at least one representative. Sections 197, 198 and 199 Alabama Constitution 1901. The apportionment of the state senate is limited to 35 senators and is divided into senatorial districts according to population and the constitution provides that "no county shall be divided into two districts, and no district shall be made up of two or more counties not contiguous to each other." Sec. 200 of the Constitution of Alabama 1901.

Unlike the Tennessee Legislature which had not acted on reapportionment since the year, 1901, the Alabama Legislature while this suit was pending in an extraordinary session called by the Governor passed two acts, one of which was Act Number 93, Senate Bill 29, commonly referred to as the "67-Senator Amendment". This act proposed an amendment to the Constitution of Alabama relating to legislative apportionment which was to be submitted to a vote of the people and was declared by the lower Court to be an unconstitutional proposal within the meaning of the Equal Protection Provisions of the Fourteenth Amendment to the Constitution of the United States. The other act being Act Number 91, House Bill 59, commonly referred to as the "Crawford-Webb Bill", was likewise declared by the District Court to be an

unconstitutional act within the meaning of the Equal Protection Clause of the Constitution.

Both of said acts were declared to be, "void, invalid, and ineffective" to the extent that they attempt to correct the denial of plaintiffs' rights, said denial arising from the debasement of plaintiffs' votes in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. While the Court declared both of the aforesaid acts unconstitutional, in our opinion both of said acts were constitutional and valid reapportionment acts of the Legislature as we will subsequently point out in this brief.

After declaring said acts unconstitutional, the lower Court then assumed the duties of the Legislature, mapped the political structure of the state, and apportioned the Legislature by Judicial Decree according to its own views, all of which was hurriedly done in a period of some thirteen days.

The District Court's Decree reapportioning the Legislature was entered subsequent to the Democratic Primary in May and prior to the General Election to be held in November, 1962.

In *Baker v. Carr*, the District Court was not called on to "re-map" the state, or to hurriedly provide relief in the face of an impending election, and in that case appellants suggested a step-by-step approach, which did not involve an assumption by the District Court of legislative duties or responsibilities. (Taken from page 20 of appellant's brief in *Baker v. Carr.)*

Should the Court have declared invalid a proposed amendment to the Constitution of Alabama which by the act of the legislature was to be submitted to a vote of the people of the state?

The proposed 67-Senator Act which was to be submitted to a vote of the people of the state was framed after the Federal System of government—namely one senator in each county of the state. The District Court in its decree accepted as completely satisfactory the provisions of this act as it relates to House reapportionment by the method of equal proportion. We will therefore discuss the merit of the 67-Senator Amendment as it relates to senatorial redistricting.

It is at once essential to recognize the basic issue involved here. It relates solely to the right of a state to structure its Legislature in accordance with provisions which it considers in the best interest of the state at large.

In declaring the proposed 67-Senator Amendment invalid, the District Court concluded as a matter of law that the people of this state cannot by Constitutional amendment or by Constitutional convention alter the basic structure of its Legislature. If unit representation in the Senate is invidious *per se*, then it would be futile to resort to convention to so provide.

In at least nine states today county or town units are given equal representation in the Legislative branch regardless of the number of each unit's inhabitants.

Among fourteen states it is required that there be one Senator for each district or else limit a district to one Senator.

There are twenty states in which each county or town unit is entitled to one representative in the Lower House. See Appendix "1" *infra* at page 31.

If the 67-Senate provision is not invidious *per se*, can it be said that it is invidious as being based on no rational policy? In this connection we would point out that there is nothing in the Federal Constitution to prevent a state acting not irrationally from choosing any electoral Legislative structure it thinks best suited to the interest, temper, and customs of its people. *MacDougall v. Green*, 335 U. S. 281, in which the Court observed that to "assume that political power is a function exclusively of numbers is to disregard the practicalities of government, and reaffirmed by *South v. Peters*, 339 U. S. 276.

It may be said that it results in gross inequality but even gross inequality may be justified if based upon a permissible state policy and is not arbitrarily and capriciously applied.

If it can be determined that the 67-Senate Amendment rests upon a permissible policy the function of the Federal judiciary ends upon such determination. We refer to Appendix 3 indicating the manner in which seven counties characterized by industrialization and fifty per cent or better of their population is repre-

sented by single or contiguous cities. It is submitted that such concentration of Legislative power into the hands of the industrial community of this state to the extent of forty-one representatives represents a potential power of control in the House of Representatives such as to prevent submission of Constitutional amendments to the people. The power thus represented when exercised as a "stranglehold" can be sufficiently disruptive and obstructive as to prevent, if not in fact control, the distribution of revenues and the removal of agricultural tax exemptions to the detriment of all the people of Alabama.

Unless the people of Alabama are permitted to structure their Legislature in a manner to provide protection from the domination of a handful of cities, then the Court has as a matter of law asserted final authority and control over matters which properly should remain for Legislative and not judicial determination.

The Supreme Court of Alabama in Opinion of Justices 61 So. 2d 881, (1955), by a divided Court, held that notwithstanding the provisions of 284 of the Constitution the people could "legally and lawfully remove any provision from the Constitution which they previously put in or ratified, even to the extent of amending or repealing one of the sections comprising our Declaration of Rights, even though it is provided that they 'shall forever remain inviolate.'"

It is respectively submitted that the 67-Senator Act was a valid and constitutional act of the Legislature and should be submitted to a vote of the people.

Should the District Court have declared unconstitutional the Crawford-Webb Act of the Legislature?

With *Baker v. Carr* in mind, let us now examine the method of apportionment of the Alabama Legislature employed in this act.

It will be observed by reference to Appendix "2" *infra* at page 33, that the House apportionment provided by the Crawford-Webb Act is the method of smallest divisors with this minor exception two seats, which would ordinarily be apportioned to Jefferson County and one seat which would ordinarily be apportioned to Mobile County, have instead been apportioned one each to Russell, Cullman and Colbert Counties.

While the method of apportionment employed in the Crawford-Webb Act is not stated in the act, nor need it have been so stated, it is nevertheless obvious. The classifications used were reasonable, logical, rational and were designed to carry out unquestioned state policy of allocating State Legislative power in a manner to prevent unwholesome concentration of power. The population classifications upon which the Crawford-Webb Act is based, are as follows:

After providing one representative to each county, as provided for in the Constitution, the balance of thirty-nine House seats were apportioned according to population by classification:

Counties 45,000— 90,000	1 additional seat
Counties 90,000—150,000	2 additional seats
Counties 150,000—300,000	3 additional seats
Counties 300,000—600,000	5 additional seats
Counties 600,000 and over	11 additional seats

An apportionment based on the method of smallest divisors is an apportionment by known and accepted standards and even though biased in favor of small counties, such bias is consistent with and in furtherance of unquestioned state policy. This policy is clearly indicated by the separate provision of the Alabama Constitution designed to protect the small counties by the original apportionment of one to each county and by the additional provision of the Constitution limiting one county to a single Senatorial district.

Disparities in population as may appear are inherent in any and all mathematical methods of apportionment. The question is the degree of disparity and whether or not such disparity can be justified on the basis of state policy, and thus avoid the onus of invidiousness.

The minor deviations in the Crawford-Webb Act from an apportionment under the method of smallest divisors is justified and equitable and based upon legislative judgment concerning the best method of guaranteeing protection against concentration of political power in the Alabama Legislature.

Many states are apportioned under provisions which put definite limitations upon the number of Representatives, of Senators, as the case may be, from any one political unit. We refer the Court to the dissenting opinion of Justice Frankfurter in *Baker v. Carr*, in which a tabulation is made from the *Book of the States 1962-63* of apportionment methods previously employed throughout the United States.

What is involved in this suit is an abstract question of political power concerning the structure and organization of the Alabama Legislature. It would be utterly impossible to argue the wisdom of the state policy with respect to allocation of power without making of the Court a forum for political debate.

Test for Invidiousness.

While the United States Supreme Court may not have established guide lines in some respects, it seems to us that it did speak clearly in *Baker v. Carr* on the following points:

1. That gross population variations are not invidious *per se*.

2. That such discriminations are not invidious if they can be shown to conform to a rational state policy designed to protect the rural interests of the state from domination by other segments of the economy.

3. That to constitute "invidiousness" any discrimination based on population must equate "no policy" or else be totally irrational as to defy any conceivable state of facts upon which to justify the discrimination.

It is respectively submitted that when the above test is applied the Crawford-Webb Act was a valid and constitutional act of the Legislature and should not have been declared unconstitutional by the District Court.

The District Court was not justified in apportioning the legislature of Alabama by judicial decree. As

stated by Mr. Justice Frankfurter in his dissenting opinion in *Baker v. Carr*, 82 S. Ct. 691 (1962):

> "In all of the apportionment cases which have come before the Court, a consideration which has been weighty in determining their non-justiciability has been the difficulty or impossibility of devising effective judicial remedies in this class of case. An injunction restraining a general election unless the legislature reapportions would paralyze the critical centers of a State's political system and threaten political dislocation whose consequences are not foreseeable. A declaration devoid of implied compulsion of injunctive or other relief would be an idle threat. Surely a Federal District Court could not itself remap the State: the same complexities which impede effective judicial review of apportionment a fortiori make impossible a court's consideration of these imponderables as an original matter. And the choice of elections at large as opposed to elections by district, however unequal the districts, is a matter of sweeping political judgment having enormous political implications, the nature and reach of which are certainly beyond the informed understanding of, and capacity for appraisal by, courts. - - -
>
> "Although the District Court had jurisdiction in the very restricted sense of power to determine whether it could adjudicate the claim, the case is of that class of political controversy which, by the nature of its subject, is unfit for federal judicial action."

CONCLUSION.

Many questions are presented in this case which were not considered by the Court in *Baker v. Carr*. More is involved here than the rights of parties litigant. The very foundation of state government is at stake. If this decision is allowed to stand, then the State of Alabama and its sister states are not sovereign states.

It is therefore respectfully submitted that this Court should reconsider the decision in *Baker v. Carr* and should return to the original constitutional proposition that courts do not interfere with the political structure of states government; that this Court should determine and decree that the District Court did not have power or authority to reapportion the Legislature of Alabama, or if it did have such power the Court was not justified in apportioning the Legislature of Alabama by judicial decree; that the "67-Senator Act" and the "Crawford-Webb Act" were valid and constitutional acts of the Alabama Legislature; and that a justiciable controversy did not exist between the appellants and the appellees in this case, and the case should have been dismissed by the District Court.

It is respectfully submitted that this case should be reversed and remanded to the District Court with directions that the judgment be vacated and the case be dismissed; and, that an election be held in accordance with the existing laws of the State of Alabama for members of the Legislature in accordance with the Statutes of that state as they existed prior to the

judgment of the District Court in this case, upon call by the Governor of Alabama.

Respectfully submitted,

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I, Joseph E. Wilkinson, Jr., one of the attorneys for the Appellees, B. A. Reynolds, as Judge of Probate of Dallas County, Alabama, and Frank Pearce, as Judge of Probate of Marion County, Alabama, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 19th day of September, 1963, I served copies of the foregoing brief on the several Appellees and Cross-Appellants, by mailing copies in duly addressed envelopes, with first class postage, prepaid, to their respective attorneys of record as follows:

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APPENDIX No. 1.

TABLE OF STATES

APPORTIONED UNDER PROVISIONS REQUIRING ONE SENATOR PER DISTRICT OR LIMITING A SENATORIAL DISTRICT TO ONE SENATOR

AUTHORITY: **BOOK OF THE STATES 1962-63**

Alabama	Nevada
California	New Jersey
Connecticut	New Mexico
Florida	South Carolina
Georgia	Texas
Idaho	Vermont
Iowa	Wyoming
Montana	

TABLE OF STATES

REQUIRING HOUSE REPRESENTATION OF NOT LESS THAN ONE PER COUNTY

AUTHORITY: **BOOK OF THE STATES 1962-63**

Alabama	New Mexico
Arkansas	New York
Hawaii	North Carolina
Idaho	North Dakota
Iowa	Ohio
Kansas	Pennsylvania
Mississippi	South Carolina
Missouri	Utah
Montana	West Virginia
New Jersey	Wyoming

APPENDIX No. 2.

COMPARISON: HOUSE APPORTIONMENT UNDER PROVISIONS OF ACT No. 91; METHOD OF EQUAL PROPORTIONS; AND METHOD OF SMALLEST DIVISORS

County	Crawford-Webb Act, Act 91	SDM	EPM
Jefferson	12	14	17
Mobile	6	7	8
Montgomery	4	4	4
Calhoun	3	3	3
Etowah	3	3	3
Madison	3	3	3
Tuscaloosa	3	3	3
Baldwin	2	2	1
Colbert	2	1	1
Cullman	2	1	1
Dallas	2	2	2
Houston	2	2	1
Lauderdale	2	2	2
Lee	2	2	1
Marshall	2	2	1
Morgan	2	2	2
Russell	2	1	1
Talladega	2	2	2
Walker	2	2	2

Balance of counties one each under all apportionment methods.

APPENDIX No. 3.

TABLE OF TEN INDUSTRIAL COUNTIES SHOWING CITY POPULATION AS PER CENT OF TOTAL COUNTY POPULATION

County	City	Population	Co. Pop.	% Rounded of Total Pop.
Jefferson	Birmingham	340,887	634,864	54%
Mobile	Mobile	202,779	314,301	64%
Montgomery	Montgomery	134,393	169,210	79%
Madison	Huntsville	72,365	117,348	61%
Tuscaloosa	Tuscaloosa	63,370	109,047	58%
Etowah	Gadsden	58,088	96,980	59%
Calhoun			95,878	39%
	(Oxford	3,603		
contiguous	(			
	(Anniston	33,657		
		37,260		

(Boundaries extended since census to increase population of Oxford)

Lauderdale			61,622	
Colbert			46,506	
			108,128	
	(Florence	31,649		
contiguous	(Sheffield	13,499		
	(Tuscumbia	8,994		
		54,142		50%
Morgan	Decatur	29,217	60,454	

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Supreme Court of the United States

OCTOBER TERM, 1963

No. 23

B. A. REYNOLDS, ETC., ET AL.,
Appellants,

vs.

M. O. SIMS, ET AL.,
Appellees.

No. 27

DAVID J. VANN AND ROBERT S. VANCE,
Appellants,

vs.

BETTYE FRINK, SECRETARY OF STATE OF THE STATE OF ALABAMA, ET AL.,
Appellees.

No. 41

JOHN W. McCONNELL, JR., ET AL.,
Appellants,

vs.

BETTYE FRINK, SECRETARY OF STATE OF THE STATE OF ALABAMA, ET AL.,
Appellees.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

BRIEF FOR APPELLEES, M. O. SIMS, ET AL.

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STATEMENT OF THE CASE

Appellees, fourteen citizens of the United States of America and the State of Alabama, and residents of Jefferson County, instituted the litigation now before this Court in Nos. 23, 27 and 41. After hearing the evidence and arguments of counsel for various parties and intervenors, the District Court found that appellees had been denied the Equal Protection of the Law by continued malapportionment of the Alabama Legislature, declared that the then existing apportionment and that proposed by the Alabama Legislature were invalid, ordered and effected a new apportionment and retained jurisdiction for further action in the event that no proper reapportionment was made by the Legislature elected in accordance with the Court order. *Sims v. Frink*, 208 F. Supp. 431.

Appeals were taken by two Probate Judges of Alabama (No. 23) (hereinafter termed Appellants), and by two sets of intervenors (Nos. 27 and 41) (hereinafter distinguished as Intervenor-Appellants).

This Court noted probable jurisdiction on June 10, 1963, and ordered consolidation of the three appeals. *Reynolds v. Sims*, ——— U.S. ———; 83 S. Ct. 1692.

QUESTION PRESENTED

Appellees join with Intervenors Farr, Hopping, Ryan and Morgan in their statement that the only question presented is:

May a three-Judge District Court order partial reapportionment of a State Legislature so as to "loosen the stranglehold" and, retaining jurisdiction, reasonably await possible action by the State Legislature before proceedings to final, complete relief?

SUMMARY OF ARGUMENT

The District Court relying upon *Baker v. Carr*, 369 U. S. 186, held that it had jurisdiction of the matters alleged in the complaint. The soundness of that decision was scarcely attacked by Appellants. Its holding is affirmed by Appellees.

The apportionment of the Alabama Legislature existing at the time of the filing of the Complaint was invidiously discriminatory, as admitted by all parties in the District Court and on appeal.

The legislative acts presented to the District Court as compliance with the Alabama Legislature's mandate under both state and federal law was clearly inadequate. Both the Crawford-Webb Bill and the 67 Senator Amendment violated the clear duty of the Legislature. As permanent reapportionment they were void. As a temporary step toward true reapportionment, the House provisions of the latter and the Senate provisions of the former were acceptable.

The District Court proceeded cautiously and with obvious reluctance. It attempted to release the stranglehold by a reapportionment injunction. It admitted the shortcomings of the court plan. But it retained jurisdiction to grant full relief if the reapportioned Legislature balked again. This was no error, but an exercise of judicial discretion. The deliberate speed of this District Court should be commended and the decree affirmed.

ARGUMENT

PROPOSITION I. THE DISTRICT COURT HAD JURISDICTION TO DECLARE VOID THE EXISTING APPORTIONMENT OF THE ALABAMA LEGISLATURE AND TO ORDER AN APPORTIONMENT TO "RELEASE THE STRANGLEHOLD."

The District Court noted in its opinion of April 14, 1962, on the hearing of the Application for Interlocutory Injunction that under *Baker v. Carr*, 369 U. S. 186, it had jurisdiction of the action.[1] In its opinion of July 21, 1962, the District Court reaffirmed its jurisdiction.[2]

Appellants in No. 23 persist in challenging jurisdiction and by mere generalities seek to overturn *Baker*.

Of course, the clear enunciation of jurisdiction in *Baker* was reiterated in *Gray v. Sanders*, ——— U. S. ———, 83 S. Ct. 801.

That jurisdiction exists is clear.

PROPOSITION II. THE APPORTIONMENT OF THE ALABAMA LEGISLATURE UNDER THE THEN EXISTING LAW AND THE LEGISLATIVE ACTS WAS "INVIDIOUSLY DISCRIMINATORY."

(a) The Then Existing Apportionment

The District Court noted in its opinion of July 21, 1962, that:

> "It has been generally conceded throughout this litigation by all the parties that the present apportionment of both Houses of the Legislature of the State of Alabama constitutes "invidious discrimination" in violation of the Equal Protection Clause of the Fourteenth Amendment."[3]

Appellants apparently also concede this, for no where in their brief is there any attempt to justify the then existing apportionment.

(b) The Crawford-Webb Apportionment

[1] R. 62, 63.
[2] R. 141.
[3] R. 144.

The House provisions of the Crawford-Webb Bill deprived large counties of the representation to which they are clearly entitled under any standard method of fairness. The equal proportions method results in the apportionment presently existing. Appellants admit to no rational explanation for the House apportionment.

The Senate apportionment proposal was also a failure insofar as compliance with the requirements of the Alabama and Federal Constitutions are concerned. The previously existing Senate was controlled by 25.1% of the people of Alabama. The Crawford-Webb apportionment placed control in the hands of a mere 27.6% of the people. The Senate is controlled by fewer people than reside in the State's two largest counties. Nineteen counties assigned by the Crawford-Webb bill to two and three county districts each have larger populations than live in the smallest district.[1] Six Senatorial districts have less than one-half of the number of people required by the Alabama Constitution.

In the Crawford-Webb Senate the vote of a citizen in the Bibb and Perry County District is worth twenty times that of a citizen of Jefferson County. The vote of citizens in the six smallest districts is worth fifteen or more times that of such Jefferson residents. In twenty-two districts, citizens have eight or more times as much representation as citizens residing in Jefferson. The representatives of a majority of the people do not have enough votes to prevent the creation of additional counties (twelve) or to defeat constitutional amendments (fifteen).

There is, therefore, no rational explanation of the Senate redistricting plan under the Crawford-Webb bill. Senate seats were allocated by the whims and personal pleasure of

[1] Bibb and Perry, population: 31,715—61,620 short of the perfect district of 93,335.

the Legislators, not by geography, political unit, population, or other scheme discernible to Appellants or, for that matter, Intervenor Appellants.

But, whether by whim or for personal pleasure or not the Crawford-Webb Senate apportionment improved, no matter how slightly, the apportionment of the Alabama Senate. Indeed, the District Court noted the probable inadequacy of the change when it stated:

> "As a piece of permanent legislation the provisions of the "Crawford-Webb Act" both as to the Senate and as to the House are totally unacceptable."[1]

(c) The 67 Senator Apportionment

The last sentence of Section 284, Alabama Constitution of 1901, as amended, provides:

> "Members in the Legislature shall be based upon population, and such basis of such representation shall not be changed by constitutional amendment."

The meaning of the above sentence and intention of the framers of the Alabama Constitution of 1901 is quite clear. The author of that provision, Mr. Coleman of Greene County, a delegate to the Constitutional Convention of 1901, clearly explained its purpose when he said to the Convention:

> "Now the great reason some provision of this kind should appear either here or in the report of the Committee on Representations is this: When the Convention assembles as a Convention, of course it can change this provision as it sees proper. When you submit an amendment to the Constitution to the people, on one single question, it can never be presented in all its force and with all its merits. *This simply provides that it shall not be altered by a simple amendment*

[1] R. 154

made to the Constitution. It should always remain upon a population basis until another Constitutional Convention shall be called, when it can then properly consider all these protections and provisions which are necessary." [Emphasis supplied][1]

Mr. Coleman's sentiments have been echoed by other representatives including those from the so-called "Black Belt" counties.[2]

The present Justices of the Alabama Supreme Court appear to condemn the validity of the 67 Senator proposal. While opinions of the Justices, elicited by the Legislature or by the Governor under the terms and provisions of Sections 34-36, inclusive, Title 13, Code of Alabama (1940) (recomp. 1958), result in no judgment or decree and are not binding on the Court, they are indicative of the judgment of the individual Justices.[3] Two previous opinions have been issued with respect to the population provision of the Alabama Constitution. In the first, Justices Brown, Livingston, Lawson and Simpson expressed their individual judgments as follows:

"The power to propose amendments to the Constitution is not inherent in the legislative department, and in the absence of a provision in the Constitution conferring such power on the legislature, it has no capacity thus to initiate amendments. Where, however, by the Constitution, the legislative department is authorized to submit amendments to the Constitution, its authority in that regard is restricted only by the limitations contained in that instrument and by the prohibitions of the Federal Constitution. 16 Corpus Juris Secundum, Constitutional Law, Sect. 9, Page 37; *Johnson v. Craft*, 205 Ala. 386; 87 So. 375. See, *Collier v. Frierson*, 24

[1] Official proceedings, Constitutional Convention 1901, Vol. 3, Page 3913.
[2] See In re *Opinion of the Justices*, 263 Ala. 158, 81 So. 2d 881, at 889, et seq.
[3] See In re *Opinion of the Justices*, 209 Ala. 393, 96 So. 487; In re *Opinion of the Justices*, 254 Ala. 177, 47 So. 2d 655; In re *Opinion of the Justices*, 267 Ala. 110, 100 So. 2d 565; and *State v. Hester*, 260 Ala. 566, 72 So. 2d 61.

Ala. 100; In re *Opinion of the Justices*, 222 Ala. 355, 133 So. 457.

> The official proceedings of the Constitutional Convention of 1901 (see Vol. 3, Official Proceedings, Constitutional Convention of 1901, pages 3906-3924) clearly disclose the purpose of the convention to withhold from the legislature the authority to propose amendments to the organic law which would effectively *change the basis of representation in the legislature*. Unquestionably, the above quoted provision of section 284, supra, withholds from the legislature the power and authority to initiate amendments to the Constitution which would have the effect of changing the basis of representation in the legislature to other than a population basis."[1]

In re *Opinion of the Justices*, 263 Ala. 158, 81 So. 2d 881, Justice Simpson apparently altered his previous position indicating his judgment that the last sentence of Section 284 could be deleted from the Constitution by constitutional amendment. Of the present membership of the Supreme Court of Alabama, only Justice Merrill joined Justice Simpson in this view. Chief Justice Livingston and Justices Lawson and Goodwin each maintained the view that as a matter of State law the last sentence of Section 284 could not be deleted from the Constitution by constitutional amendment. Of the present Court, it should be noted that neither Justice Harwood nor Justice Coleman has expressed a view with respect to this matter.

Under the so-called "67 Senator Amendment," the scheme of Senate districting cannot be termed geographical, since Baldwin County, containing 1,613 square miles, receives one Senator as does Etowah County, containing 555 square miles, the remaining counties of the State making up a jagged "crazy quilt." Nor can this scheme of districting be

[1] In re *Opinion of the Justices*, 254 Ala. 183, 47 So. 2d 713, at 714.

justified on the basis of population in that Jefferson County with 634,864 people is allocated one Senator as is Coosa County with 10,726 people, the ratio of representation being almost 60 to 1. A varying "crazy quilt" representation pattern with respect to remaining counties, is the rule rather than the exception.

Under the 67 Senator Plan control of the Senate by 25.1% of the population as formerly existed would be reduced to a cancerous deathgrip held by 19.4% of the people. Absolute control of the Senate would thereby be vested in fewer persons than reside in a single county of the state.

The only conceivable rationalization of the standard or classification of the 67 Senator Amendment is that it is based on political units of the State. But counties are political units created by the Legislature with no powers save those granted by the Legislature.

Gomillion v. Lightfoot, 364 U. S. 339; is an instance where another creature of the Alabama Legislature was struck down because of the use of political unit boundaries to deprive citizens of their right to be represented in their government.

The adoption of the 67 Senator Amendment made the intention of the Legislature most clear. The 67 Senator Amendment was a bald-faced attempt at the utilization of presently existing gerrymander lines to deprive Plaintiffs and other similarly situated of their right to vote. It has been held that a majority of the citizens of Alabama do not have a right by constitutional amendment to deprive a minority of their right to the franchise. This was settled in *Davis v. Schnell*, (D. C. Ala.) 81 F.Supp. 872, aff'd per curiam, 336 U. S. 933, and *Gomillion v. Lightfoot*, supra. A minority has no greater right to deprive the majority of their right to have their vote at least equally reflected in the

state's law making, tax levying and revenue spending body.

The 67 Senator Amendment's distribution of Senate seats was based upon nothing more than the capricious will of an invidiously malapportioned legislature.

PROPOSITION III. DISTRICT COURTS MAY EMPLOY THE DOCTRINE OF "ALL DELIBERATE SPEED" IN THE EFFECTING OF LEGISLATIVE REAPPORTIONMENT.

Intervenor Appellants argue that "Pernicious and destructive minority rule has been imposed on the people of Alabama in the name of the United States Constitution by a United States District Court."[1]

The Court below discharged its duty to Plaintiffs and the people of Alabama in a manner which, up to the date of that Court's decision, was unheard of. On a temporary basis and in order to break the "stranglehold" on the legislature, the District Court actually caused the holding of a legislative election in accordance with the injunction it issued. It served notice on all Alabama that the United States District Court fully intended to vindicate the voting rights of the Plaintiffs and every other Alabama citizen, and it told the Legislature to get about the business of changing the representative basis of Alabama democracy.

Since *Brown v. Board of Education*, 349 U. S. 294, District Courts in the South have constantly faced a chorus of discordant assault. In *Brown*, the problem of remedy was as present as in *Baker*. There "all deliberate speed" was enjoined upon the District Court for the enforcement of an order of law that was, at best, to be afforded a tortuous pathway to fruition. The Supreme Court there granted a one year delay prior to the fastening of remedies. District Courts

[1] Brief in No. 27, page 24.

were there granted an opportunity for moving forward the constitutional guarantee of freedom and equality. Again, in *Baker*, this Court moved to correct the sundering of the Republic into stagnant pools of non-responsive, non-democratic government. Again as in *Brown*, the District Court for the Middle District of Alabama responded to the call of the Constitution.

In impatience, Intervenor Appellants accuse the District Court of imposing the yoke of minority rule upon the people; and, even more than that they contend that there has been a permanent plan of reapportionment in Alabama when, in the District Court's own words:

> "It is this Court's further intention to retain jurisdiction of this case and defer any hearing on plaintiffs' motion for a final injunction until the Legislature, as provisionally reapportioned by this order, has an opportunity to provide for a true reapportionment of both Houses of the Alabama Legislature. The Court hopes that the moderate steps taken by this order may be enough to break the strangle hold. They certainly will not suffice as any permanent reapportionment. If they should prove insufficient to break the strangle hold, the Court remains under the solemn duty to relieve the plaintiffs and other citizens like situated from further denial of the equal protection of the laws. That much must be accomplished before there can be a final disposition of this case."[1]

Intervenor Appellants attack the only institution to which freedom in Alabama has been entrusted. The District Court should be granted the right to finish the job.

CONCLUSION

Involved in the case presented to the District Court by Appellees and necessarily in this appeal is the most basic

[1] R. 155, 156.

and fundamental liberty born of our democratic system—representation in a legislative body which makes the law, levies the taxes, incurs the public debt and spends the public revenue. Appellees represent the millions of Alabamians who have long been deprived of fair and equal representation. Denied relief over the years by all state agencies, Appellees turned to the judiciary. The Alabama District Court gave temporary relief. It should be permitted to continue.

These several appeals should be dismissed and the decree affirmed.

Respectfully submitted,

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In the
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1963

NO. 23

B. A. REYNOLDS, ETC., ET AL.,
Appellants,
versus
M. O. SIMS, ET AL.,
Appellees.

NO. 27

DAVID J. VANN AND ROBERT S. VANCE,
Appellants,
versus
BETTYE FRINK, SECRETARY OF STATE OF THE STATE OF ALABAMA, ET AL.,
Appellees.

NO. 41

JOHN W. McCONNELL, JR., ET AL.,
Appellants,
versus
BETTYE FRINK, SECRETARY OF STATE OF THE STATE OF ALABAMA, ET AL.,
Appellees.

Appeals from the United States District Court for the Middle District of Alabama, Northern Division.

BRIEF FOR APPELLEE RICHMOND M. FLOWERS AS ATTORNEY GENERAL, STATE OF ALABAMA

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BRIEF FOR APPELLEE RICHMOND M. FLOWERS AS ATTORNEY GENERAL, STATE OF ALABAMA

OPINION BELOW

The opinion of the District Court for the Middle District of Alabama is reported as *Sims v. Frink*, 208 F. Supp. 431.

SUBSTITUTION

MacDonald Gallion as Attorney General of the State of Alabama and Bettye Frink as Secretary of State of the State of Alabama are no longer in office as such. They have been succeeded by Agnes Baggett as Secretary of State and Richmond M. Flowers as Attorney General.

The clerk of this Court has recently advised that the two above last-named officials have been, or will be, substituted, and this appellee, Richmond M. Flowers as Attorney General of the State of Alabama is now, or will be, a party to the pending appeals.

BAKER V. CARR

This short brief is filed upon the assumption that *Baker v. Carr*, 369 U.S. 186, will not be overruled in the consideration of these appeals. If such should happen, then another day in court is respectfully requested.

QUESTION PRESENTED

Can the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States be met by apportioning the House and Senate of the State of Alabama according to population *to some extent* in both Houses?

ARGUMENT

It is to be pointed out that the Legislature as provisionally reapportioned by the District Court is effective only until the Legislature of the State of Alabama as provisionally reapportioned "has an opportunity to provide for a true reapportionment of both Houses of the Alabama Legislature." *Sims v. Frink*, supra.

The elections ordered by the District Court have been held; the Legislature as reapportioned by the court decree has met; it has adjourned its Regular Session sine die, without taking any action or availing itself of the opportunity given to it by the court.

It appears therefore that the question of permanent reapportionment as distinguished from one made in an attempt to break the strangle hold is back with the District Court

for future action in the light of *Baker v. Carr*, and possibly the decision of this Court on the pending appeals.

If the District Court has the right to reapportion the Legislature, no good reason appears why the District Court could not do so by applying the following quoted part from its opinion in this case, namely:

> "The result may well be that representation according to population *to some extent* must be required in *both* Houses if invidious discrimination in the legislative systems as a whole is to be avoided."

The Court under the above rule could by proof ascertain every fact necessary for a fair and rational reapportionment which would meet both the State and Federal Constitutions.

The Equal Protection Clause does not demand of state enactments either mathematical identity or rigid equality. *McGowan v. Maryland*, 366 U.S. 420.

In *MacDougall v. Green*, 335 U.S. 281, it was ruled that the Equal Protection Clause does not "deny a State the power to assure a proper diffusion of political initiative as between its thinly populated counties and those having concentrated masses, in view of the fact that the latter have practical opportunities for exerting their political weight at the polls not available to the former."

The prohibition of the Equal Protection Clause goes no further than the invidious discrimination. *Williamson v. Lee Optical of Okla., Inc.*, 348 U.S. 483.

The District Court, after a careful consideration of the State constitutional provisions and the Equal Protection Clause, at least intimated that a rational plan of appor

tionment could be devised by basing both Houses of the Legislature to some extent on population. This plan if its execution is rational avoids any conflict between the State and Federal Constitutions.

The above stated guide lines should be approved by this Court. The test of whether the reapportionment when made either by the Court or the Legislature is rational must await that event before final approval or disapproval by this Court.

CONCLUSION

So, since the measures taken by the District Court, challenged on this appeal, and the elections held pursuant thereto were temporary in character; since the Legislature did not avail itself of the opportunity to make a valid permanent reapportionment; since permanent reapportionment of the Alabama Legislature must be obtained either by the District Court or the Legislature, no good reason appears for the decision of constitutional questions arising from temporary measures which have expired. It is better to await final action of the District Court or the Legislature, as the case may be.

There have been several guide lines suggested in the various briefs filed, but the one which will comply with the Federal Constitution and also avoid striking down State constitutional provisions is the one suggested by the District Court; namely, that representation according to population *to some extent* must be required in *both* Houses to avoid invidious discrimination.

We respectfully contend that the above rule may be applied either by the District Court if it has such power or the Legislature if given another chance.

One thing is certain. The Legislature under State consti-

tutional provisions cannot be apportioned on a strictly population basis. If such is required under the Equal Protection Clause, State constitutional provisions will fall. Courts seek to avoid such result if legally possible. This the District Court did, and its decision is reasonable, rational, and fair as to the guide lines stated.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 23

B. A. REYNOLDS, ET AL., APPELLANTS

v.

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No. 27

DAVID J. VANN AND ROBERT S. VANCE, APPELLANTS

v.

AGNES BAGGETT, SECRETARY OF STATE OF THE STATE OF ALABAMA, ET AL.

No. 41

JOHN W. McCONNELL, JR., ET AL., APPELLANTS

v.

AGNES BAGGETT, SECRETARY OF STATE OF THE STATE OF ALABAMA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINIONS BELOW

The opinion of the three-judge district court (R. 137–167) is not yet reported. A prior opinion of the three-judge district court (R. 62–65) is reported at 205 F. Supp. 245.

JURISDICTION

The judgment of the three-judge district court was entered on July 25, 1962 (R. 173). Notices of appeal and cross-appeal to this Court were filed on August 17 and August 23, 1962, and probable jurisdiction was noted on June 10, 1963 (R. 197–200, 201–203, 204–205, 206). The jurisdiction of this Court rests upon 28 U.S.C. 1253.

QUESTIONS PRESENTED

1. Whether the preexisting apportionment of both houses of the Alabama legislature violates the equal protection clause of the Fourteenth Amendment by creating gross inequalities in *per capita* representation without rhyme or reason.

2. Whether the district court properly held that the plaintiffs' constitutional rights would also be violated by the apportionments provided by a proposed constitutional amendment, and by standby legislation which was to take effect upon failure of the amendment.

3. Whether the district court abused its discretion in ordering a temporary apportionment combining the most equitable provisions of the proposed amendment and the standby legislation, in order to allow the legislature to reapportion itself.

CONSTITUTIONAL PROVISIONS, STATUTES, AND PROPOSED CONSTITUTIONAL AMENDMENT INVOLVED

Article IV, Section 50, of the 1901 Alabama Constitution is set forth in the Appendix, p. 49. Article IX, Sections 197–201, of the 1901 Alabama Constitution is set forth in the Appendix, pp. 49–50. Article XVIII, Section 284, of the 1901 Alabama Constitution is set forth in the Appendix, pp. 50–51. Sections 1 and 2 of 32 Alabama Code (1958) are set forth in the Appendix, pp. 51–52.

Proposed Constitutional Amendment No. 1 of 1962, Alabama Senate Bill No. 29, Special Session, 1962 (the so-called "67-Senator Amendment"), is set forth in the Appendix, pp. 52–54. The Alabama Reapportionment Act of 1962, Alabam House Bill No. 59, Special Session, 1962 (the "Crawford-Webb Act") is set forth in the Appendix, pp. 54–56.

INTEREST OF THE UNITED STATES

This is one of four cases pending argument on the merits in which the Court will be called upon to formulate under the Fourteenth Amendment the constitutional principles applicable to challenges to malapportionment of a State legislature. The United States has filed its principal brief in *Maryland Committee for Fair Representation* v. *Tawes*, No. 29, because of an earlier due date. There we attempted to present a compendious analysis applicable to all four cases showing their relation to each other. The instant case raises specific problems in the application of those principles.

STATEMENT

1. *The Complaint.*—On August 26, 1961, the plaintiffs (the appellees in No. 23)[1]—fourteen citizens and taxpayers of the United States and of the State of Alabama, who are residents and registered voters of Jefferson County, Alabama—filed a complaint in the United States District Court for the Middle District of Alabama, in their own behalf and on behalf of all voters of Alabama who are similarly situated, challenging the apportionment of the Alabama legislature (R. 1–39). The defendants (the appellants in No. 23), who were sued in their representative capacities as officials charged with the performance of duties in connection with State elections, included the Secretary of State and the Attorney General of Alabama; the Chairmen and Secretaries of the Alabama State Democratic Executive Committee and the Republican Executive Committee; and three Judges of Probate of three counties as representatives of all the probate judges of Alabama (R. 1, 3–8). The complaint alleged deprivation of rights under the Alabama Constitution and under the equal protection clause of the Fourteenth Amendment, and asserted that the district court had jurisdiction under the Civil Rights Act. 42 U.S.C. 1983 and 1988, as well as 28 U.S.C. 1343 (R. 2, 8–14).

The complaint stated that the Alabama legislature consisted of a House of Representatives of 106 members and a Senate of 35 members.[2] It set out (R. 13–

[1] Two groups of intervenor-plaintiffs (see p. 8 below) are cross-appellants in Nos. 27 and 41.

[2] Article IV, Section 50, of the Alabama Constitution (Appendix, p. 49) provides that the Legislature shall consist of not

14; Appendix, pp. 49–50) relevant portions of Article IX of the Alabama Constitution of 1901 which provide that "[t]he members of the House of Representatives shall be apportioned by the legislature among the several counties of the state, according to the number of inhabitants in them, respectively, as ascertained by the decennial census of the United States * * *"; that the Senate districts "shall be as nearly equal to each other in the number of inhabitants as may be * * *"; that "[r]epresentation in the Legislature shall be based upon population, and such basis of representation shall not be changed by constitutional amendments"; that it is the duty of the legislature to reapportion after each census; that each county (there are now 67) is entitled to at least one member of the House of Representatives; and that each Senate district shall have only one member and no county may be divided between two Senate districts (thereby placing a limit of one Senator for any county).[3]

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more than 35 senators and 105 representatives, except that, in addition to the 105 members, each county thereafter created shall be entitled to one representative. The House increased by one member in 1903 when Houston County was created out of Dale, Geneva and Henry Counties (R. 166). Houston County was joined to Henry County to form the thirty-fifth senatorial district, which up to 1903 consisted only of Henry County (R. 17).

Article IX, Sections 202 and 203, of the Constitution, which was based on the 1900 census, established the precise senatorial and representative districts of the State until a new reapportionment was made by the legislature. Sections 202 and 203, as modified by the creation of Houston County in 1903, were enacted into the Alabama Code of 1907 and 1923, and were re-enacted as 32 Alabama Code (1958) 1, 2.

[3] The cross-appellants in No. 27 (Br. 15–16) say that the Alabama Constitution forbids the division of a county only

The complaint alleged that the last apportionment of the Alabama Legislature was based on the 1900 federal census despite the requirement of the Alabama Constitution that the legislature be reapportioned every ten years; and that, since the population growth of the various counties in the State from 1900 to 1960 had been uneven, Jefferson and other counties were now victims of serious discrimination (R. 18–20, 35–39). As a result of the failure of the legislature to reapportion itself, plaintiffs asserted that they were denied "equal suffrage in free and equal elections * * * and the equal protection of the laws" in violation of the Alabama Constitution and the Fourteenth Amendment to the Federal Constitution (R. 8–9).

Plaintiffs also claimed that they had no adequate remedy at law, and that they had exhausted all forms of relief other than that which might be available to them through the federal courts. They asserted that the legislature had established a pattern of conduct from 1911 to the present time which "clearly demonstrates that no reapportionment * * * shall be ef-

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when one or both pieces will be joined with another county to form a multi-county district, *i.e.*, counties entitled by population to two or more senators can be split into the appropriate number of districts. The argument is based on the fact that prior to the Constitution of 1901, the Alabama Constitution so provided. Appellants say that there is no reason to believe that the 1901 Constitution was intended to effect any change. However, this view seems contrary to the words of Article IX, Section 200, of the Alabama Constitution and to the practice under it. The only apportionments under the 1901 Constitution, the 1901 apportionment and the Crawford-Webb Act (see pp. 11–12, 54–56 below), gave no more than one seat to a county even though by population several would have been entitled to more.

fected"; that representation at any future constitutional convention would be established by the legislature, a fact which would make it "extremely unlikely" that the membership of any such constitutional convention would differ from that of the legislature; and that, while the Alabama Supreme Court had ruled that the legislature had not complied with the Alabama Constitution, the court nevertheless held that it would not interfere with the question of reapportionment[4] (R. 20–21).

Plaintiffs requested the convocation of a three-judge district court under 28 U.S.C. 2281. They sought: (1) a declaratory judgment that Article IX, Sections 202 and 203 of the Alabama Constitution and 32 Alabama Code 1, 2, which establish the present apportionment of the legislature, are unconstitutional under the Alabama Constitution and the due process and equal protection clauses of the Fourteenth Amendment; (2) an injunction enjoining the defendants from executing their duties in connection with elections of the legislature until such time as the legislature reapportions itself in accordance with the Alabama Constitution; (3) a mandatory injunction (until such time as the legislature properly reapportions) requiring the defendants to conduct the 1962 general election at large over the whole State; and (4) any other relief which "may seem just, equitable and proper" (R. 25–33).

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[4] *Waid* v. *Pool*, 255 Ala. 441, 51 So. 2d 869; *Ex parte Rice*, 143 So. 2d 848 (Ala. Sup. Ct.); *Opinion of the Justices*, 254 Ala. 185, 47 So. 2d 714; *Opinion of the Justices*, 263 Ala. 158, 81 So. 2d 881.

2. *The Pre-decision Proceedings in the District Court.*—A three-judge district court was convened to hear and determine the cause. Three groups of citizens, taxpayers and qualified voters of Alabama and the Counties of Jefferson, Mobile, and Etowah, were granted leave to intervene in the action as intervenor-plaintiffs; two of the groups are cross-appellants in Nos. 27 and 41 (R. 47, 65–66, 76–77). With minor exceptions, all the intervenors adopted the allegations and prayers of the plaintiffs' amended complaint (R. 46, 60–61, 69).

On March 29, 1962 (three days after this Court had decided *Baker* v. *Carr*, 369 U.S. 186), the plaintiffs moved for a preliminary injunction requiring the defendants to conduct at large the May 1962 Democratic primary elections and the November 1962 general elections of the legislature (R. 47–50). The motion was set for hearing by the three-judge court in an order which stated the court's tentative view upon two points: (1) that an injunction was not required before the primary elections of May 1962 to protect plaintiffs' constitutional rights; and (2) that no action should be taken by the court, which is not "absolutely essential" for the protection of asserted constitutional rights, before the Alabama Legislature has had "further reasonable but prompt opportunity to comply with its duty" under the Alabama Constitution (R. 57–59).

On April 14, 1962, the court, after reiterating the views expressed in the order of March 30, 1962, re-set the case for hearing on July 16 (R. 62–63). The

court noted that the importance of the case, together with the necessity for effective action within a limited period of time, required an early announcement of its views. The court then indicated (1) that, under *Baker* v. *Carr,* 369 U.S. 186, it had jurisdiction of the cause, the complaint stated a justiciable cause of action, and the plaintiffs had standing to bring the suit; (2) that it was taking judicial notice of facts which were "well known" to the Justices of the Supreme Court of Alabama and the people of Alabama—that there had been population changes in the counties of Alabama since 1901, that the present representation of the Alabama Legislature as provided for in 32 Alabama Code 1 and 2 is not on a population basis, and that the legislature had never reapportioned its membership as required by the Alabama Constitution; (3) that if the legislature complied with the provision of the Alabama Constitution (Art. XVIII, Sec. 284) that "Representation in the legislature shall be based upon population," there could be no valid objection on federal constitutional grounds to any such apportionment and the complaint in the instant case would be dismissed; (4) that if the legislature failed to act, or its actions did not meet constitutional standards, the court would be under a "clear duty" to take some action on the matter before the general elections of November 1962 (action which it said should be kept to the minimum necessary for the guaranteeing of constitutional rights to Alabama citizens); (5) that, to such an end, the "present thinking" of the court was for adherence to

the plan suggested by Mr. Justice Clark in his concurring opinion in *Baker* v. *Carr*—that is, awarding seats released by the consolidation or revamping of existing districts to counties suffering the most "egregious discrimination," thereby releasing the stranglehold on the legislature sufficient to permit it to reapportion itself; and (6) that, while retaining jurisdiction, the court would defer further action in the case until the newly elected legislature had "full opportunity" to reapportion itself, which would permit the dismissal of the case (R. 62–65).

On July 2, 1962, Judge Johnson permitted the plaintiffs to amend their complaint to add a further prayer for relief (R. 76). The plaintiffs requested that, since the legislature (which was assembled in special session) "appears to be giving no serious consideration to any act reapportioning the House of Representatives and redistricting the Senate * * * on a population basis prior to the November, 1962, general election" in accordance with the court's opinion of April 14, 1962, the court provisionally reapportion the House of Representatives and the Senate. The plaintiffs asked that the court consolidate existing election districts and distribute the seats thus released to those counties suffering the most "egregious discrimination" so that the stranglehold on the legislature would be relaxed enough to permit it to reapportion its membership. The plaintiffs then suggested that the court defer further action until the newly elected legislature had full opportunity to reapportion its membership in accordance with the Ala-

bama Constitution; and that the court enjoin the defendants from performing their election duties except in accordance with the provisional plan of reapportionment (R. 69–70).[5]

On July 12, 1962, an extraordinary session of the Alabama Legislature advanced two reapportionment plans to take effect in 1966. One was a proposed constitutional amendment, called the "67-Senator Amendment" (see Appendix, pp. 52–54). It provided for a House of Representatives consisting of 106 members apportioned by giving one seat to each of the 67 counties and distributing the others according to population by the "equal proportions" method. Using this formula, the constitutional amendment specified the number of representatives for each county until a new apportionment could be made on the basis of the 1970 census. The Senate would be composed of 67 members, one from each county. The act provided that the proposed amendment should be submitted to the voters for ratification at the general election of November 1962.

The "Crawford-Webb Act" (see Appendix, pp. 54–56), was enacted as standby legislation to take effect in 1966 if the proposed constitutional amendment should fail.[6] The act provides that the Senate should

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[5] Intervenors Vann and Vance (cross-appellants in No. 27) had previously asked for similar relief (R. 60–61).

[6] The Act itself merely says that it will take effect in 1966. However, the proposed constitutional amendment also provides that it will take effect in 1966. The amendment would take precedence if it was adopted by the voters and not held unconstitutional. As the district court stated, the Act is a stand-by

consist of 35 members representing 35 senatorial districts, established along county lines. The act altered 10 out of the former 35 districts (compare R. 35–36 with Appendix, pp. 54–55). As for the House of Representatives, the statute apportions the representatives among the counties as follows: Jefferson, 12 members; Mobile, 6 members; Montgomery, 4 members; Calhoun, Etowah, Madison, and Tuscaloosa, 3 members each; Baldwin, Colbert, Cullman, Dallas, Houston, Lauderdale, Lee, Marshall, Morgan, Russell, Talladega, and Walker, 2 members each; and all the remaining counties, 1 member each (R. 113, 161).[7] The Crawford-Webb Act also provides that it shall be effective "until the legislature is reapportioned according to law," but it provides no standard for such a reapportionment.[8]

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measure designed to take effect in the event that the voters rejected the "67-Senator Amendment" or the federal courts refused to accept the proposed amendment as effective action complying with the Fourteenth Amendment (see R. 143–144).

[7] While no formula for this apportionment is stated, one can be extrapolated (see the Brief for Appellants, B. A. Reynolds, *et al.*, p. 39): each county with less than 45,000 people receives one representative; counties with 45,000 to 90,000 people, 2 seats; counties with 90,000 to 150,000 people, 3 seats; counties 150,000 to 300,000 people, 4 seats; counties with 300,000 to 600,000 people, 6 seats; counties with over 600,000 people, 12 seats.

[8] Presumably, future apportionments would be based on the existing provisions of the Alabama Constitution which the statute, unlike the proposed constitutional amendment, would not effect. The State constitutional provisions are plainly inconsistent with the statute's apportionment of both houses.

3. *The Evidence.*—The basic facts consist of two sets of incontrovertible figures: (1) the population for each county in Alabama and for each senatorial district according to the 1960 census; (2) the number of representatives apportioned to each county under each of the plans at issue—the apportionment under the 1901 statute, the proposed constitutional amendment, and the Crawford-Webb Act. Under all three plans, each senate district would be represented by one senator. Convenient compilations of these figures are found at R. 35–39 and are also attached as appendices to the opinion of the district court (R. 163–167).

4. *The Decision and Decree of the District Court.*—On July 21, 1962, the district court, relying on *Baker v. Carr,* 369 U.S. 186, held that it had jurisdiction over the cause; that the complaint alleged a justiciable cause of action; and that the plaintiffs had standing to challenge the Alabama apportionment statutes (R. 140–141). The court then ruled that the existing inequality in representation in Alabama was the result of "invidious discrimination" in violation of the equal protection clause of the Fourteenth Amendment, a finding which the court noted had been "generally conceded" by the parties to the litigation (R. 144).

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[1] Jefferson (634,864), Mobile (314,301), Montgomery (169,210), Etowah and St. Clair (122,368), Madison, (117,348), Tuscaloosa (109,047), Baldwin, Escambia, and Monroe (104,971), and Lauderdale and Limestone (98,135) (R. 35–36, 166).

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In support of this conclusion, the court referred to appendices to its opinion (R. 163–165) which showed that the growth and shifts in population between 1901 and 1960 had converted the preexisting population into a crazy-quilt utterly lacking rhyme or reason.

The court then considered the proposed constitutional amendment and the Crawford-Webb Act to ascertain whether the legislature had taken "effective action" to remedy the unconstitutionality of the existing apportionment (R. 146). The apportionment of one Senator to each county under the proposed constitutional amendment, the court held, would be "even more invidious than at present" because (1) the present control of the Senate by 25.1 percent of the people of Alabama would be reduced to 19.4 percent; (2) the 34 smallest counties, whose total population is less than that of Jefferson County, would have a majority of the total membership of the Senate; and (3) senators elected by 14 percent of the population of Alabama could prevent the submission of any future proposal to amend the State constitution (R. 148). The court noted that the "only conceivable rationalization" of the senatorial provisions is that it is based on political units within the State and is analogous to the United States Senate, but it rejected the analogy on the ground that the Alabama counties are merely involuntary political divisions of the State created by

statute to aid in the administration of government (R. 148–149).[10] The court also concluded that the proposed apportionment of the House of Representatives—one representative for each of the 67 counties with the remaining 39 distributed according to population—was "based upon reason, with a rational regard for known and accepted standards of apportionment" (R. 153).

Turning next to the Crawford-Webb Act, the district court held that an apportionment of the House of Representatives giving additional seats to the populous counties in diminishing ratio to their population (*i.e.*, 3 for 90,000 to 150,000 people and 4 for 150,000 to 300,000) was "totally unacceptable" (R. 152). Each representative from Jefferson and Mobile Counties would represent over 52,000 citizens while representatives from eight "Black Belt" counties would each represent less than 20,000 citizens (R. 153). The court regarded the apportionment of the Senate provided in the Crawford-Webb Act as but a "slight

[10] The court also noted that the proposal "may not have complied with the State Constitution" since not only does Article XVIII, Section 284, of the Alabama Constitution provide that the population basis of the Legislature "shall not be changed by constitutional amendments" but the Alabama Supreme Court had earlier indicated that Section 284 could be altered only by constitutional convention (R. 147–148). See *Opinion of the Justices*, 254 Ala. 185, 47 So. 2d 714; *Opinion of the Justices*, 263 Ala. 158, 81 So. 2d 881.

improvement over the present system of representation" since the net effect of switching a few seats from the less populous to more populous counties would merely increase the minority electing a majority of the Senate from 25.1 percent to 27.6 percent of the population (R. 152). The court pointed out that the vote of a citizen in the senatorial district consisting of Bibb and Perry Counties would be worth twenty times that of a citizen in Jefferson County; that the vote of a citizen in the six smallest districts would be worth fifteen or more times that of a citizen in Jefferson County; and that, in twenty-two districts, a citizen would have eight or more times the voting strength of a citizen in Jefferson County (R. 152). The court then held that the Crawford-Webb Act was "totally unacceptable" as a "piece of permanent legislation" which, under the Alabama Constitution (Art. IX, Sec. 198, 200), would remain in effect without alteration until the next decennial census (R. 154).

The district court then adopted as a provisional reapportionment the provisions relating to the House contained in the "67-Senator Amendment"—one seat for each county with the other 39 distributed according to population—and the provisions of the Crawford-Webb Act relating to the Senate (R. 154). The court retained jurisdiction and deferred any hearing on the plaintiffs' motion for a permanent injunction "until the Legislature, as provisionally reapportioned * * *, has an opportunity to provide for a true reapportionment of both Houses of the Alabama Legislature" (R. 155–156). The court emphasized

that its "moderate" action was designed to break the stranglehold on the legislature and would not suffice as permanent reapportionment (R. 156).

On July 25, 1962, a decree was entered in accordance with the foregoing rulings (R. 173–191).

After the district court's decision, new primary elections were held pursuant to House Bill No. 130, Special Session, 1962, which was passed at the same session as the proposed constitutional amendment and the Crawford-Webb Act, to be effective in case the district court itself ordered reapportionment. The general elections in November 1962 were likewise held on the basis of the court's apportionment. Consequently, the present Alabama legislature is apportioned according to the district court's decree.

Appeals to this Court were noted by the defendants (appellants in No. 23) and by two groups of plaintiff-intervenors (cross-appellants in Nos. 27 and 41) (R. 197–205).

ARGUMENT

INTRODUCTION AND SUMMARY

The initial question is whether the apportionment existing in Alabama prior to the district court's decision—the apportionment provided by the 1901 legislation—violated the plaintiff's rights under the Fourteenth Amendment. That was not only the apportionment in effect when the bill was filed but even on the date of the district court's decision the election officials were obliged to follow it unless prevented by the court. Furthermore, it is far from clear that either the "67-Senator Amendment" or

the Crawford-Webb Act has become effective as a matter of State law. The amendment has not been submitted to the voters. The Crawford-Webb Act was apparently intended to take effect in 1966 only if the proposed amendment was rejected by the people or held unconstitutional in a final adjudication.

We submit, for reasons stated below in more detail, that the preexisting apportionment is plainly unconstitutional as applied today whatever its validity when enacted in 1901. During the 60-year interval the passage of time and shifts in the distribution of population made the apportionment into a crazy-quilt. The resulting gross inequalities violate the equal protection clause. That proposition is plainly implied in the opinions of the prevailing Justices in *Baker* v. *Carr*, 369 U.S. 186, and is supported by a host of subsequent decisions in the lower courts.

It is unnecessary to decide whether either the "67-Senator Amendment" or the Crawford-Webb Act was properly before the district court on the merits. The proposed amendment, not having been ratified, has never become effective, and whether the Crawford-Webb Act actually came into force may be debatable as a matter of Alabama law. The question need not be decided because both measures had to be considered in formulating a remedy for the vindication of the constitutional rights which defendants were threatening to violate by adhering to the 1901 apportionment in the November election.

Having found the preexisting apportionment unconstitutional, the district court was required to provide an effective remedy. Legislative apportionment, however, is primarily a matter for the State legislatures, both because it is a State problem, within the confines of the Fourteenth Amendment, and because it involves the exercise of a wide range of legislative choice. If the legislature has plainly set forth its preference as to a substitute apportionment that satisfies the requirements of due process and equal protection, it would be an error of law to disregard the legislature's action in favor of a judicial apportionment framed by the court. Compare *Sobel* v. *Adams*, 208 F. Supp. 316, 319–322 (S.D. Fla.); *Toombs* v. *Fortson*, U.S.D.C., N.D. Ga., decided September 5, 1962 (passing on both proposed constitutional amendment and proposed statutes); *Moss* v. *Burkhart*, U.S.D.C., W.D. Okla., decided July 17, 1963 (passing on proposed statute, but declining, because it was unlikely to be adopted, to pass on proposed constitutional amendment except to say that it was of doubtful constitutionality).[11]

The "67–Senator Amendment" set forth the Alabama legislature's preference with respect to future

[11] There was considerably less warrant to consider the constitutionality of the constitutional amendments and statutes in the cases cited above than in this case. In those cases, the constitutional amendment might be rejected by the people or the statutes not passed by the legislature. Here, unless a new constitutional amendment or statute is adoped in the meantime, either the "67-Senator Amendment" or the Crawford-Webb Act would, according to their terms, be effective in 1966.

apportionment, even though it had not yet been ratified. The Crawford-Webb Act was adopted by the legislature as an alternative. Only if both were unconstitutional under the Fourteenth Amendment could the district court properly proceed to frame an interim judicial apportionment to be effective pending further legislative action.

In the second part of our Argument, therefore, we address ourselves to the apportionment proposed in the "67—Senator Amendment" and show that although it is not a crazy-quilt, being based upon intelligible principles, it is nonetheless unconstitutional because the principle of popular representation has been subordinated to the representation of political subdivisions to such an extent as to create very gross inequalities in *per capita* representation and give control of both branches of the legislature to small minorities of the people. The controlling legal principle is stated as the fourth proposition in our Maryland brief in the general analysis of the standards to be applied in implementing *Baker* v. *Carr* (pp. 46–50) and is elaborated there as applied to the Maryland apportionment (pp. 57–90). In our view, the instant case is indistinguishable. Not only are the populous counties grossly underrepresented in the Alabama legislature in comparison with other counties but senators representing as few as 19.4 percent of the people would constitute a majority of the Senate while representatives chosen by no more than 42.4 percent can control the House of Representatives.

In Point III, we take up the Crawford-Webb Act and show that it violates the same principle for essen-

tially the same reasons: the inequalities in *per capita* representation are no less gross; 27.6 percent of the people could control the Senate and 37 percent, the House. In addition, the inequalities in the proposed representation in the Senate defy rational explanation.

Finally, we turn to the issue raised by the cross-appellants—whether the district court erred in not requiring both houses of the Alabama legislature to be apportioned strictly on the basis of population. It is essential, in this field, for the courts to give the legislatures as much opportunity as possible, consistent with protecting basic constitutional rights, to make their own apportionments since this is primarily a State and legislative responsibility. In our view the district court properly gave the Alabama legislature time to act. When the legislature took inadequate action, it was proper to adhere as closely as practicable to the apportionments approved by the representatives of the people of Alabama, provided that this course offered reasonable hope that minority control would be broken sufficiently to result in an early legislative apportionment recognizing plaintiffs' constitutional rights. If the hope proves vain, the district court can provide a more complete remedy, for it recognized that its decree was only an interim measure and retained jurisdiction to grant further relief if necessary to secure the plaintiffs their full constitutional rights.[12]

[12] For the above reasons, we find it no more appropriate here than in the companion cases to consider whether substantially equal representation *per capita* is required by the Fourteenth Amendment in both branches of a State legislature.

I

THE PRE-EXISTING APPORTIONMENT OF THE ALABAMA LEGISLATURE VIOLATED THE EQUAL PROTECTION CLAUSE BECAUSE IT CREATED GROSS INEQUALITIES IN PER CAPITA REPRESENTATION WITHOUT RHYME OR REASON

The legislative apportionment in effect in Alabama prior to the institution of the present action illustrates the causes of the kind of gross malapportionment that prevailed in a number of States prior to the decision in *Baker* v. *Carr*. The apportionment act was enacted in 1901. It was based on the Alabama Constitution which provides that the Senate shall be apportioned according to population, except that no county may have more than one senator,[13] and that the House of Representatives shall be apportioned by giving one seat to each county with the remaining 39 distributed according to population. Article IX, Sec. 198, 200 (Appendix, pp. 49, 50). While these rules allowed 41 percent of the people to elect a majority of the Senate and 44 percent to elect a majority of the House even in 1901, the inequalities were at least the result of an intelligible system, whether or not it might be unconstitutional upon some other ground.

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[13] The limitation to one senator for a county results from provisions that no county may be divided in forming senatorial districts and no district may have more than one senator. Art. IX, Sec. 200 (App., p. 50). It would seem that the prohibition against dividing a county between districts might well have been read to prohibit splitting off parts of a county for combination with another county without preventing division of a county into two or more whole districts; but the State's own interpretation is to the contrary and is plainly controlling.

Since 1901, Alabama, like most States, has experienced both growth and change in the distribution of population. Instead of 1,828,697 people, there are now 3,266,740, an increase of 78 percent (R. 39). Twenty-four of the 67 counties have lost population (R. 37–39) and others have grown at different rates. Mobile County has grown over five times from 62,740 to 314,301 (R. 38). Meanwhile the legislature failed to comply with the mandate of the State constitution requiring decennial reapportionment. The result is that the apportionment became a crazy-quilt and 25.1 percent, instead of 41 percent of the people became able to elect a majority of the Senate (R. 148), and 25.7 percent, instead of 44 percent, could elect a majority of the House of Representatives.

The gross discrimination that exists today in *per capita* representation is not simply the result of the limitation of one senator to any one county or the minimum of one representative for each county. Those inequalities have at least an intelligible basis. In contrast, the discrimination resulting from shifts in population has no justification. Such discrimination is plainly unconstitutional under familiar principles. "The Constitution in enjoining the equal protection of the laws upon States precludes irrational discrimination as between persons or groups of persons in the incidence of a law." *Goesaert* v. *Cleary*, 335 U.S. 464, 466.

In the House of Representatives, Barbour County had 35,142 people in 1901, over twice the average population per representative in the State, and therefore

was assigned two representatives. Bullock County had 31,944 people and likewise had two representatives. Baldwin County then had only 13,194 people and therefore only one representative. Today Barbour has only 24,700 people, an average of 12,350 per representative,[14] and Bullock County has only 13,462 people, or 6,731 per representative, but the population of Baldwin County has grown to 49,088. Thus, Barbour has half the population of Baldwin, and Bullock has about ¼, but both have twice the representation of Baldwin. Conversely, the voters in Barbour have four times and voters in Bullock have 7½ times the representation of voters in Baldwin.[15]

In 1901, Dallas County had 54,657 people and three representatives, *i.e.*, 18,219 per representative. Etowah then had 27,361 and two representatives, or one for each 13,681. Mobile County, in 1901, had 62,740 and three representatives, an average of 20,913 per representative. And Montgomery County had 72,047 people and four representatives, an average of 18,012 per representative. As of 1960, Dallas' population had risen merely to 56,667 or 18,889 per representative. Etowah and Mobile Counties' population, however, had soared to 96,980 and 314,301 so that they now have 48,490 and 104,767 people per representative, respectively. Montgomery's population is now 169,210 or 42,303 per representative. Thus, Dallas has three representatives

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[14] In our brief in the Maryland case, we mistakenly said that Barbour County has only 12,350 people.

[15] The population figures in this paragraph, as well as most of those in the remainder of this brief, are taken from the tables in the record at pp. 35–39.

while Etowah has two, although Etowah has over 70 percent more people. Voters in Dallas County have well over 2½ times the representation of those in Etowah. Similarly, Dallas and Mobile have the same number of representatives although Mobile has almost six times as many people. This means that voters in Dallas County have almost six times the representation of those in Mobile. In addition, Mobile, while having almost twice the population of Montgomery County, has one less representative. As a consequence, voters in Montgomery County have over 2½ times the representation of those in Mobile (although less than half the representation of those in Dallas County). And voters in Bullock County have almost 16 times the representation of those in Mobile.

Finally, the most populous county in the State, Jefferson County, has grown from 140,420 in 1901 to 634,864. Its seven representatives represent an average of 90,695 today as compared to 20,060 in 1901. As a result, voters in Jefferson County have less than 1/13 the representation of those in Bullock County and about 1/5 the representation of those in Dallas County.

These examples could easily be multiplied. It is sufficient to say that, applying Alabama's own Constitution—which gives one seat to each county and distributes the rest according to population—15 of the 30 counties with more than one seat [16] are overrepresented and six are underrepresented; thus, the vice affects 70 percent. Moreover, the two largest coun-

[16] The discrimination in favor of counties with one seat is, at least in part, because of the guarantee of one seat to each county provided by the Alabama Constitution.

ties have been deprived, without justification, of over half their representation: Jefferson has only 7 seats instead of the 17 to which it would be entitled by the formula in the State constitution, and Mobile has only 3 instead of 8. While we are of course not arguing that the violation of the State constitution constitutes a violation of the Fourteenth Amendment, the State here offers no explanation for these deviations from its own standard.

The discrimination is equally egregious in the Senate. Wilcox County, which in 1901 had 35,631 people, now has only 18,739. Yet, it has a representative all to itself. Bordering Wilcox County, is a district composed of Monroe, Baldwin, and Escambia Counties, which is the second most populous multi-county district in the State.[17] Whereas, those three counties had only 48,180 people in 1901, they now have 104,971. Consequently, voters in Wilcox County have over 5½ times the representation of those in the adjoining district. The arbitrariness of this discrimination is plain since the two districts could be made substantially more equal by either placing Monroe (with 22,372 people) in the same district as Wilcox or joining both Escambia County (with a population of 33,511) and Monroe with Wilcox.

Wilcox also adjoins Lowndes County. That county, which had 35,651 people in 1901, now has 15,417 and is the least populous senatorial district in the

[17] The more populous single-county districts result from the provisions in the Alabama Constitution limiting a county to only one senator and not from shifts of population since 1901.

State. Bordering both Wilcox and Lowndes Counties is the district composed of Butler, Conecuh, and Covington Counties which in 1901 had 58,621 people, but now has 77,953. The people in this district thus have only ⅓ the representation of those in Lowndes County. The transfer of Butler (with a population of 24,560) to the same district as Wilcox would make the two districts almost equal in population. Or, if Wilcox and Lowndes Counties were joined, the resulting district would still be one of the smallest in the State. The extra seat could be used, for example, to give Lee and Russell Counties with a total population of 96,105 a senator each. The resulting districts would have 49,754 and 46,351 people, respectively.

To take one last example, Barbour County, which had 35,152 people in 1901 but has only 24,700 today, has a senator to itself. The adjoining district, consisting of Lee and Russell Counties, now has 96,105 people in comparison to the 58,909 it had in 1901. Thus, voters in Barbour County have 3½ times the voting strength of those in the multi-county district. This discrepancy could be largely eliminated by a series of changes which would include joining Barbour to a neighboring county.

Much of the discrimination in the Senate results from the requirement of the Alabama Constitution which allows a county only one seat. Thus, Jefferson County with 634,864 people would be discriminated against even if the provisions in the State constitution were faithfully applied on the basis of present population. However, the disparities in representation

between populous counties like Jefferson and the most overrepresented counties is in part the result of the failure of the legislature to reapportion because small districts like Lowndes should be joined to neighboring districts. As a result, while voters in Lowndes County now have over 41 times the voting strength of those in Jefferson, this could be reduced by over half. Moreover, other slightly less populous counties are the victims of gross discrimination because they are joined to other counties. Etowah County has 96,980 people and yet is joined together with St. Clair, to form a senatorial district having a population of 122,368. This district is the most populous multi-county district in the State; indeed, there are only two other multi-county districts more populous than Etowah County alone. Such discrimination is utterly without justification.

An apportionment that imposes such capricious inequalities upon the people in *per capita* representation in the legislature plainly violates the Fourteenth Amendment. The equal protection clause safeguards the right to participate in the processes of self-government. See our Maryland brief pp. 28–29. "[I]t has been open to the courts since the enactment of the Fourteenth Amendment to determine, if on the particular facts they must, that a discrimination reflects *no* policy, but simply arbitrary and capricious action" (*Baker* v. *Carr*, 369 U.S. 186, 226).

The inequalities in Alabama's preexisting apportionment are a consequence of legislative inaction. They have no apparent basis in policy. Appellees

suggest none; on the contrary, in the district court it was virtually agreed "by all the parties that the present apportionment of both Houses of the Legislature of the State of Alabama constitutes 'invidious discrimination' in violation of the Equal Protection Clause of the Fourteenth Amendment" (R. 144). With sufficient ingenuity and willingness to overlook rough edges, one might possibly conceive a policy or combination of policies that would explain the discrimination. No such process of rationalization should be supplied in dealing with the basic democratic right to fair representation, especially where the inequalities result from failure to comply with the State's own constitution. Even in the field of economic regulation, "[d]iscriminations are not to be supported by mere fanciful conjecture." *Hartford Steam Boiler Ins. Co.* v. *Harrison*, 301 U.S. 459, 462; *Borden's Farm Products Co.* v. *Baldwin*, 293 U.S. 194, 209.

The district court was therefore correct in holding that the preexisting Alabama apportionment violated plaintiffs' constitutional rights. Accord, *Baker* v. *Carr*, 206 F. Supp. 341, 346–348 (M.D. Tenn.); *Toombs* v. *Fortson*, 205 F. Supp. 248, 254–255, 256 (N.D. Ga.); *Sobel* v. *Adams*, 208 F. Supp. 316, 323–324 (S.D. Fla.); *Thigpen* v. *Meyers*, 211 F. Supp. 826, 831 (W.D. Wash.), pending on appeal, No. 381, this Term; *Sincock* v. *Duffy*, 215 F. Supp. 169, 184 (D. Del.), pending on appeal *sub nom. Roman* v. *Sincock*, No. 307, this Term; *Mann* v. *Davis*, 213 F. Supp. 577, 584 (E.D. Va.), pending on appeal, No. 69, this Term;

Moss v. *Burkhart*, U.S.D.C., W.D. Okla., decided July 17, 1963; *Sweeney* v. *Notte*, 183 A. 2d 296, 305 (R.I. Sup. Ct.).

II

THE APPORTIONMENT PROVIDED BY THE PROPOSED CONSTITUTIONAL AMENDMENT WOULD VIOLATE THE EQUAL PROTECTION CLAUSE BY SUBORDINATING POPULAR REPRESENTATION TO THE REPRESENTATION OF POLITICAL SUBDIVISIONS TO SUCH A DEGREE AS TO CREATE GROSS INEQUALITIES AMONG VOTERS AND GIVE CONTROL OF BOTH HOUSES OF THE LEGISLATURE TO SMALL MINORITIES OF THE PEOPLE [18]

Alabama's "67—Senator Amendment" is not subject to attack as creating a crazy-quilt of unequal representation based upon no intelligible rule. Seats in the Senate would be apportioned one to each county. Sixty-seven seats in the House would go one to each county, but the remaining 37 seats would be distributed among the counties as nearly as possible in proportion to population. The apportionment is apparently based upon a principle of corporate representation through equal political subdivisions combined, in the lower chamber, with the principle of direct popular representation. The "67—Senator Amendment" rests upon the same basis as the Maryland apportionment involved in No. 29 (disregarding the special provisions relating to the City of Baltimore).

[18] The reasons for concluding that the court below properly ruled upon the constitutionality of the "67—Senator Amendment" and the Crawford-Webb Act are discussed in the Introduction and Summary, pp. 19–20, *supra*.

Although the Fourteenth Amendment condemns an apportionment which creates capricious inequalities in *per capita* representation without rhyme or reason, a showing that seats are allocated according to some intelligible rule is not sufficient *per se* to satisfy the guarantee of equal protection. The rule of classification may not violate another specific constitutional policy or introduce differentiations that are invidious or irrelevant to any tolerable purpose of governmental organization. More important here is the necessity of weighing the degree of inequality against the policies that the *per capita* discrimination seeks to secure. Objectives that might furnish acceptable justification for smaller variations [19] become so relatively insignificant as to leave the discrimination 'arbitrary' and capricious where there are grosser inequalities in representation and a total disregard for the principle of majority rule. We submit that the "67-Senator Amendment," like the Maryland apportionment at issue in No. 29 where we discuss the applicable principles at greater length, violates the equal protection clause by subordinating popular representation to the representation of political subdivisions to such a degree as to create gross inequalities and

[19] Since the instant case, like the three companion cases, can be decided without ruling upon whether the Fourteenth Amendment requires substantially equal representation *per capita* in both houses of a State legislature, we assume here, as we have in those cases that there may be permissible objectives of legislative apportionment that would justify some departure from equality *per capita*. The assumption is made *arguendo*, reserving further judgment until the issues are presented.

give control of the legislature to representatives elected by small minorities of the people.

The facts of discrimination and resulting minority control are readily demonstrated. Appendix D to the opinion of the district court shows the wide variations in population among the 67 counties. Since each county would have one senator, there would be equally great inequalities in *per capita* representation. The disparity between the most overrepresented district (Coosa County) and the most underrepresented (Jefferson County) would be more than 59 to 1. There are five counties with a population in excess of 105,000 and eight with a population of less than 15,000; between any pair drawn from both classes the discrimination would be at least 7 to 1. The nine most populous counties (Jefferson, Mobile, Madison, Montgomery, Tuscaloosa, Etowah, Calhoun, Talladega and Dallas) which hold 50.8 percent of the population, would elect only nine of the 67 senators, or 13.4 percent—one-fourth their aliquot share.

In the House the inequalities and resulting minority control would be less objectionable but still gross. The disparity between the most overrepresented county (Coosa) and the most underrepresented (Houston) would be almost 5 to 1. The nine most populous counties, with 50.8 percent of the population, would have only 45 out of 106 seats, or 42.4 percent.

The discrimination in both houses runs in favor of the same relatively unpopulous counties and against the more populous; thus, the inequality in one house

adds to the severity of the discrimination in the other.

If one house of a State legislature is apportioned substantially in accordance with population, there may be room for variation in the other,[20] but surely there can be no justification for substantial discrimination against the same people in their *per capita* representation in both houses. In this respect there is no significant difference between the Maryland case and the present aspect of the instant controversy. Having fully presented our argument there (pp. 29–34, 43–50, 57–90), we content ourselves here with a summary.

The principles of voter equality and majority rule are too vital a part of our constitutional heritage to suppose that the Fourteenth Amendment permits the States to submerge them in the interest of recognizing equality of political subdivisions, either for its own sake or because of the collateral consequences. The founding fathers firmly believed that the State legislatures should be apportioned according to population. At the Philadelphia Convention and also in the State conventions which ratified the Constitution there was general agreement that any legislature operating directly on the people should, as a matter of fundamental fairness, be apportioned in both houses according to population. See Appendix B to our Maryland brief. Constitutional practice has also favored the principle, for although a number of State constitutions have always called for limiting the principle by some recognition of political subdivisions or a limita-

[20] Here, as in the Maryland case, we make this assumption *arguendo* because no decision upon the question is required.

tion upon the representation of a few densely populated areas, the formal rules did not then create the grave injustices, gross inequalities and rule by small minorities that they yield in Maryland and Alabama today. "The conception of political equality from the Declaration of Independence to Lincoln's Gettysburg Address to the Fifteenth, Seventeenth and Nineteenth Amendments can mean only one thing—one person, one vote". (*Gray* v. *Sanders*, 372 U.S. 368, 381). The meaning cannot be altogether different in legislative representation.

Altogether the Court has had few cases involving the right to fair representation, its decisions under the equal protection clause in other fields make it plain that strong justification is required for any legislative classification affecting fundamental rights. For example, in *Skinner* v. *Oklahoma*, 316 U.S. 535, 541, the Court, noting that procreation is "one of the basic civil rights of man," held that "strict scrutiny of the classification which a State makes in a sterilization law is essential, lest unwittingly or otherwise, invidious discriminations are made against groups or types of individuals in violation of the constitutional guaranty of just and equal laws." Earlier, in *Yick Wo.* v. *Hopkins*, 118 U.S. 356, 370, the Court made clear that voting "is regarded as a fundamental political right, because preservative of all rights."

The reason for the rule is also applicable. Discrimination in legislative representation, as the recent history of Alabama indicates, prevents effective resort to the political process which can ordinarily be expect-

ed to bring about the repeal of unjust legislation. Cf. *United States* v. *Carolene Products Co.*, 304 U.S. 144, 152, Note 4.

Appellants in No. 23 suggest (Br. 14) that the "67-Senator Amendment" is constitutional by analogy to the United States Congress. However, for reasons argued in our brief in the Maryland case (pp. 73–82), there is no federal analogy to the State legislatures. The Congress reflects the mixed nature of the federal government; the House of Representatives reflects its national aspect with the States in a subordinate role, the Senate reflects the continued sovereignty and equality of the States. As the framers recognized, the State governments are no such mixture; they operate directly on the people. The counties of Alabama are mere subdivisions of the State, created by the State to carry out the functions which the State chooses to assign to them. *E.g.*, *Askew* v. *Hale County*, 54 Ala. 639, 641; *State* v. *Butler*, 225 Ala. 191, 193, 142 So. 531; *Moore* v. *Walker County*, 236 Ala. 688, 690, 185 So. 175.

The federal analogy does not apply for an additional reason. The very most the federal analogy could be supposed to show is that the upper house may deviate substantially from equality on the basis of population if the lower house is apportioned fairly. The federal House of Representatives is, in effect, apportioned by the Constitution among the States almost exactly in conformance with population. While each State is guaranteed at least one representative, only four States have less than $\frac{1}{435}$ of the population. Thus, it

takes representatives from States with almost 50 percent of the population to constitute a majority of the House.[21] In contrast, only 42.4 percent of the people of Alabama live in counties electing over half the State House of Representatives. Forty of the 67 counties have less than 1/106 of the State population. Thus, the federal analogy cannot apply, even assuming its underlying validity, because Alabama's proposed constitutional amendment does not require that either house be apportioned substantially on the basis of population.

Appellants in No. 23 also contend (Br. 36–37) that apportionment of the Senate in the proposed constitutional amendment is justified as preventing domination of the legislature by a few populous cities. If this means that Alabama simply prefers rural voters over urban, the preference plainly constitutes invidious discrimination against the populous counties. As we discuss fully in our Maryland (pp. 39–46) and New York (pp. 14–33) briefs, it is as much a denial of equal protection for a State to give voters who live in populous counties less representation than other voters as it would be to prefer or discriminate against counties with a certain percentage of Protestants, Catholics, Negroes or businessmen. Appellants' argument also fails on the facts. As they acknowledge

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[21] Unfair districting within the States, however, by the State legislatures, has resulted in having a majority of representatives elected from *districts* having only 42 percent of the population. Such unfair districting is probably unconstitutional. See the government's brief in *Wesberry* v. *Sanders*, No. 22, this Term, pp. 30–35.

(Br. 52), it takes a minimum of ten counties to make up 52 percent of the State's population. Rule by ten counties scattered over different parts of the State can hardly be described as domination of the majority by a few populous cities. Since they are scattered, there is no reason that their interests would be uniformly the same. The Court can take judicial notice that they vary in size and social and economic character as well as location. Indeed, to make up their majority, appellants have been forced to include cities with a rather small population—Oxford, 3,603, Tuscambia, 8,944 and Sheffield, 13,499.

Finally, even if some weighting might be acceptable, the argument wholly fails to justify allocating to a majority of people only ten out of 67 senators, or less than 15 percent.

III

THE APPORTIONMENT PROVIDED BY THE CRAWFORD-WEBB ACT WOULD VIOLATE THE EQUAL PROTECTION CLAUSE, FIRST, BY PRESERVING THE CRAZY-QUILT OF REPRESENTATION IN THE SENATE AND, SECOND, BY SUBORDINATING POPULAR REPRESENTATION IN THE LEGISLATURE AS A WHOLE TO THE REPRESENTATION OF POLITICAL SUBDIVISIONS TO SUCH A DEGREE AS TO CREATE GROSS INEQUALITIES AMONG VOTERS AND GIVE CONTROL TO SMALL MINORITIES OF THE PEOPLE

The Crawford-Webb Act modified the preexisting apportionment of the Alabama legislature in two respects. It made a few changes in the existing senatorial districts, such as putting less populous counties into multiple county districts and giving at least one populous county, Etowah, a senator to itself instead of

making it part of a multicounty district. The statute also reapportioned the House by assigning a specific number of seats to each county without establishing general criteria. An intelligible basis can be extrapolated from the figures, however, for the legislature, after allocating one seat per county, apparently gave one additional seat to each county with 45,000 to 90,000 people, two additional seats to each county of 90,000 to 150,000 people, three additional seats to each county with 150,000 to 300,000 people, five additional seats to counties of 300,000 to 600,000 people and eleven additional seats to counties with over 600,000 people. See Brief for the Appellants in No. 23, p. 39.[22]

Under the Crawford-Webb Act, despite the changes, the apportionment of the Senate would still create gross inequalities in *per capita* representation without rhyme or reason. Since the population of Alabama is 3,266,740, and the Act provides for 35 senators, the ratio—the population of an ideal district—is 93,335 (R. 36). That ratio cannot be achieved, however, because the Alabama Constitution, as construed by the State, prevents any one county from having more than one senator, so that the seven counties with populations in excess of 93,335 cannot receive equal *per capita* representation with the rest of the State unless

[22] Appellants in No. 23 also suggest (Br. 38–39) that the Crawford-Webb Act apportions the House according to population using the method of smallest divisors. However, they admit three deviations from the result yielded by that method which give seats that would have gone to Jefferson and Mobile Counties to other less populous counties. It seems plain, therefore, that if the legislature applied any formula it is the formula described in the text.

the constitutional restriction be held invalid. However, even if its validity be assumed, there are still 28 senators for the remaining counties, with a total population of 1,729,112, which should yield one senator for every 61,572 people. The apportionment would be based upon that figure if the legislature had conformed to the State constitution.

In fact, the Crawford-Webb Act makes no attempt to conform to any systematic rule.[23] For example, the district with Colbert, Franklin, and Marion Counties has 90,331 people; if Marion County were detached, this district would still have a population of 68,494. The adjoining district of Pickens and Lamar Counties now has a population of only 36,153. Thus, voters in the latter district have 2½ times the representation of those in the former. If Marion County were added to this district, its population would still be 57,990.

Similarly, Butler, Conecuh, and Covington Counties form a district with 77,953 people. The neighboring district of Wilcox and Monroe Counties has 41,111 people. Thus, voters in the latter district have almost twice as much representation as those in the former. On the other hand, if Conecuh were moved to the district with Wilcox and Monroe, that district would have 58,873 people and the district comprising Butler and Covington would have 60,191.

As one last example, the district of Autauga, Chilton, and Shelby Counties has a population of 76,564

[23] The Senate districts under the Crawford-Webb Act and the population of each is set forth at R. 129 and 167.

while the adjoining district of Bibb and Perry Counties has 31,715. Thus, the disparity in representation is approximately 2½ to 1. If Autauga County were moved to the latter district, this district would have a population of 50,454. Chilton and Shelby Counties would then form a district with 57,825 people.

The State of Alabama has suggested no justification for these discrepancies. More of them are based on the limitation of one Senator to a county. The only possible explanation is that the legislature apparently desired to correct only the worst of the inequalities which previously existed (see pp. 11–12, 37–38 above). However, serious inequalities remain and, since they have no intelligible basis, the apportionment violates the Fourteenth Amendment under the principles stated earlier.

2. The apportionment under the Crawford-Webb Act would also be unconstitutional, we submit, for the same reason as the "67-Senator Amendment"—the interests advanced by the departure from *per capita* equality do not furnish a reasonable basis for the gross discrimination and utter disregard for the principle of majority rule.

In the Senate the people of every county, however populous, are limited to a single representative. Jefferson County with 20 percent of the total population of Alabama chooses only three percent of the Senate. Mobile County with 10 percent of the total population also chooses only three percent. A voter in the *average* senatorial district has three times the representation of a voter in Mobile County and six times the

representation of a voter in Jefferson. There is similar, albeit less severe, discrimination against Montgomery, Madison and Tuscaloosa Counties. A majority of the senators would come from districts containing 27.6 percent of the people.

In the House, as explained above, the counties would be assigned additional representatives on the basis of population, not in direct proportion but within increasingly wider brackets for each additional representative. The number of people per representative in the middle of the second bracket is 33,750; the number per representative in the middle of the third bracket is 40,000; the number per representative in the middle of the fourth bracket is 56,250 (however, Montgomery would be the only county in this bracket and it would have 42,303 people per representative); the number of people per representative in the middle of the fifth bracket is 75,000 (however Mobile would be the only county in this bracket and it would have 52,384 people per representative); and the number of people per county at the bottom of the last bracket would be 50,000 (however, Jefferson County would be the only county in this bracket and it would have 52,905 people per representative). Thus, there would be more population per representation as counties were more populous. The consequence is that seven counties, all in the second bracket (*i.e.*, having two representatives) would have twice the representation of Jefferson and Mobile Counties; and 12 counties in the second bracket and two in the third bracket would have over 1½ times the

representation of Jefferson and Mobile. A majority of the House would come from counties containing as little as 37 percent of the people.

Thus, both branches of the legislature are deliberately constituted by rules that discriminate against voters who live in the more populous counties. Judged simply as discrimination against urban voters in favor of rural voters, which is all that appears on the face of the legislation, the Crawford-Webb apportionment is manifestly unconstitutional. The equal protection clause forbids a State to create favored political classes on the basis of race, religion, occupation, or economic status. Where a man lives, like the number of his neighbors, is irrelevant to any permissible purpose of electoral policy. See our briefs in the Maryland (pp. 39–46) and New York cases (pp. 14–33).

It may be argued that what appears to be only a calculated effort to deprive the residents of populous counties of the right of majority rule is really directed at achieving such objectives as geographical diffusion of political influence, preserving small and compact constituencies and providing some representation to every locality which may have unique local interests. In our Maryland brief (pp. 44–50, 82–90), we have discussed the role of these factors in legislative apportionment. The short of the matter is that even if they may support some deviations from *per capita* equality, they will not justify such gross inequalities and rule by such small minorities as would be created by the Crawford-Webb Act.

IV

THE TEMPORARY APPORTIONMENT ORDERED BY THE DISTRICT COURT AS INTERIM RELIEF IS NOT AN ABUSE OF DISCRETION

Upon finding that the existing apportionment and the alternatives advanced by the Alabama legislature were all unconstitutional, the district court was required to provide appropriate relief. Under other circumstances it might have entered only a declaratory judgment or an injunction forbidding the election officials from conducting the next election according to the invalid apportionment, leaving the legislature an opportunity to provide an acceptable substitute. See pp. 46–47, *infra*. The court below had already tried that course but the legislature chosen under the old apportionment proved unable or unwilling to reapportion itself in accordance with the Fourteenth Amendment. Accordingly, the court directed a judicial apportionment with the allocation of seats in the Senate based upon the Crawford-Webb Act and the allocation in the House based upon the proposed constitutional amendment. Jurisdiction was reserved against the possibility that even the legislature so chosen would not adopt a proper apportionment. The cross-appellants challenge the interim order on the ground that it does not immediately vindicate their full constitutional rights.

The formulation of a decree in equity calls for the exercise of discretion, and a district has broad discretion especially in cases involving important public interest. *Virginian Ry. Co.* v. *System Federation No.*

40, 300 U.S. 515, 552; *Mercoid Corp.* v. *Mid-Continent Investment Co.*, 320 U.S. 661, 670. See also, *International Boxing Club* v. *United States*, 358 U.S. 242, 253; *International Salt Co.* v. *United States*, 332 U.S. 392, 400–401. While there can be little doubt of the power of a court to fashion an affirmative remedy in an apportionment case,[24] the timing and formulation of such a decree calls for balancing competing considerations: The goal, which must be attained, is to secure the plaintiffs' constitutional rights. Joined with them is a strong public interest in equitable apportionment, both for its own sake and as a means of revitalizing State government. On the other hand, the district court must be mindful of the dangers of intruding into local self-government. Apportionment also involves a wide range of choices suited to the political not the judicial branches of government. Any reapportionment ordered by a court is a poor substitute for one of the people's own making.

Mindful of these considerations the federal district courts, as well as the State courts, have uniformly endeavored to encourage the State legislatures to reapportion themselves without judicial intervention. Many courts, including the court below (R. 57–58, 140–141), have delayed deciding the issue of the constitu-

[24] *Moss* v. *Burkhart*, U.S. D.C., W.D. Okla., decided July 17, 1963; *Sobel* v. *Adams*, 208 F. Supp. 316, 318 (S.D. Fla.); *Toombs* v. *Fortson*, U.S. D.C., N.D. Ga., decided September 5, 1962. See also *Fortner* v. *Barnett*, No. 59,965, Chancery Court, First Judicial District, Hinds County, Mississippi; *Stevens* v. *Faubus*, 354 S.W. 2d 707, 711 (Ark. Sup. Ct.).

tionality of the apportionment in order to give the legislature time to act. *Sincock* v. *Terry*, 207 F. Supp. 205, 207 (D. Del.); *Lein* v. *Sathre*, 205 F. Supp. 536, 540 (D. N.D.); *Magraw* v. *Donovan*, 163 F. Supp. 184, 187–188 (D. Minn.); *Mikell* v. *Rousseau*, 183 A. 2d 817, 823 (Vt. Sup. Ct.); *Asbury Park Press, Inc.* v. *Wooley*, 33 N.J. 1, 161 A. 2d 705, 714–715; *In re Legislative Reapportionment*, 374 P. 2d 66, 71–72 (Colo. Sup. Ct.); *Butcher* v. *Trimarchi*, 28 Pa. Dist. & County Rep. 2d 537, 542. Other courts have delayed entering a decree after ruling that an apportionment was unconstitutional until the legislature should have had time to make a new apportionment satisfying the requirements of equal protection. *Sobel* v. *Adams*, 208 F. Supp. 316, 318 (S.D. Fla.); *Toombs* v. *Fortson*, 205 F. Supp. 248, 259, and unreported opinion, September 5, 1962, U.S. D.C. (N.D. Ga.); *Baker* v. *Carr*, 206 F. Supp. 341, 349, 350–351 (M.D. Tenn.); *Moss* v. *Burkhart*, 207 F. Supp. 885, 894, 898–899 (W.D. Okla.); *League of Nebraska Municipalities* v. *Marsh*, 209 F. Supp. 189, 195–196 (D. Neb.); *Mann* v. *Davis*, 213 F. Supp. 577, 585–586 (E.D. Va.), pending on appeal, No. 69, this Term; *Thigpen* v. *Meyers*, 211 F. Supp. 826, 832 (W.D. Wash.), pending on appeal, No. 381, this Term; *Sincock* v. *Duffy*, 215 F. Supp. 169, 191–192 (D. Del.), pending on appeal, No. 307, this Term; *Maryland Committee for Fair Representation* v. *Tawes*, 228 Md. 412, 180 A. 2d 656, 670–671; *Maryland Committee for Fair Representation* v. *Tawes*, Circuit Court, Anne Arundel County, Maryland, decided May 24, 1962; *Harris* v. *Shanahan*, District Court, Shawnee County,

Kansas, decided July 26, 1962; *Fortner* v. *Barnett*, No. 59,965, Chancery Court, First Judicial District, Hinds County, Mississippi. The time given the legislature to act has, where necessary, even been extended past the date of the next election. *League of Nebraska Municipalities* v. *Marsh, supra*, 209 F. Supp. at 195–196; *Toombs* v. *Fortson*, U.S. D.C., N.D. Ga., decided October 19, 1962.

In the present case the legislature's inadequate response compelled the court to take further action, but the necessity did not lessen the importance of minimizing judicial intervention into the political processes of local self-government. Accordingly, the court adopted the provisions of the proposed constitutional amendment for the apportionment of the House and the provisions of the Crawford-Webb Act for the apportionment of the Senate, making the court-ordered apportionment effective until the legislature should reapportion itself. The rationale is well-stated in the court's own opinion (R. 154–155):

> The duty to reapportion rests on the Legislature. This Court acts in the matter reluctantly because of the long continued default and total inability of the Legislature to reapportion itself. Even under such circumstances, we think that a federal court, in the light of its delicate relationship with a state legislature, should, so far as is possible, accept such parts of the Acts of the Legislature as have any merit in framing the order of the Court. For the purpose of the order of the Court to release the strangle hold on the Legislature and permit it to reapportion itself, such parts of the Acts of

the Legislature need not meet the standard of constitutionality required of a permanent Act of reapportionment.

The cross-appellants complain that the decree does not at once secure their full constitutional rights and that it may be ineffective to break the stranglehold of minority interests upon the legislature. But the court below, which was closer to local conditions than any other federal tribunal, believed that the remedy would lead to a new and equitable apportionment (R. 153–155), and the remedy chosen had the great advantage that it was based entirely upon the work of the Alabama legislature. While plaintiffs' full interests were not immediately secured, a more precipitate course of action threatened unnecessary intrusion into local political processes and potential conflict with State authorities; for the only alternatives were election at large or a judicial apportionment. Although additional steps would be required if the interim remedy proved insufficient, the district court was not required to rush into the assumption of legislative responsibilities and invite conflict with the State.

Furthermore, the decree is not a final measure. The district court reserved jurisdiction, stating that if the legislature did not reapportion itself the court

would enter a decree securing plaintiffs' full rights under the Fourteenth Amendment (R. 156).[25] The opinion it expressed concerning the constitutionality of the Crawford-Webb apportionment of the House of Representatives (R. 153) is a dictum which apparently had no effect upon the choice of an interim remedy and which will be open for consideration if the necessity for further judicial action should arise.

CONCLUSION

For the foregoing reasons, we respectfully submit that the decision of the district court should be affirmed.

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[25] The decree does say that the court's apportionment will remain in effect until the legislature reapportions itself consistent with the Fourteenth Amendment (R. 188). However, the opinion also states expressly that the decree is intended to be temporary and that it does not meet the full requirements of the Constitution (R. 154–156). The court retained jurisdiction "for the purpose of issuing any and all additional orders that may become necessary or appropriate in the judgment of this Court" (R. 190), and stated that it would use this power to remedy the violation of federal constitutional rights if the legislature did not act (R. 156). When read together, these provisions mean that the apportionment specified in the decree should terminate as soon as the legislature provides a constitutional apportionment and that, in default thereof, the court may grant further relief.

APPENDIX

Article IV, Section 50, of the 1901 Alabama Constitution provides:

> Sec. 50. The legislature shall consist of not more than thirty-five senators, and not more than one hundred and five members of the house of representatives, to be apportioned among the several districts and counties, as prescribed in this Constitution; provided that in addition to the above number of representatives, each new county hereafter created shall be entitled to one representative.

Article IX, Sections 197–201, of the 1901 Alabama Constitution provides:

> Sec. 197. The whole number of senators shall be not less than one-fourth or more than one-third of the whole number of representatives.
>
> Sec. 198. The house of representatives shall consist of not more than one hundred and five members, unless new counties shall be created, in which event each new county shall be entitled to one representative. The members of the house of representatives shall be apportioned by the legislature among the several counties of the state, according to the number of inhabitants in them, respectively, as ascertained by the decennial census of the United States, which apportionment, when made, shall not be subject to alteration until the next session of the legislature after the next decennial census of the United States shall have been taken.
>
> Sec. 199. It shall be the duty of the legislature at its first session after the taking of the decennial census of the United States in the year nineteen hundred and ten, and after each

subsequent decennial census, to fix by law the number of representatives and apportion them among the several counties of the state, according to the number of inhabitants in them, respectively; provided, that each county shall be entitled to at least one representative.

Sec. 200. It shall be the duty of the legislature at its first session after taking of the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the number of senators, and to divide the state into as many senatorial districts as there are senators, which districts shall be as nearly equal to each other in the number of inhabitants as may be, and each shall be entitled to one senator, and no more; and such districts, when formed, shall not be changed until the next apportioning session of the legislature, after the next decennial census of the United States shall have been taken; provided, that counties created after the next preceding apportioning session of the legislature may be attached to senatorial districts. No county shall be divided between two districts, and no district shall be made up of two or more counties not contiguous to each other.

Sec. 201. Should any decennial census of the United States not be taken, or if when taken, the same, as to this state, be not full and satisfactory, the legislature shall have the power at its first session after the time shall have elapsed for the taking of said census, to provide for an enumeration of all the inhabitants of this state, upon which it shall be the duty of the legislature to make the apportionment of representatives and senators as provided for in this article.

Article XVIII, Section 284, of the 1901 Alabama Constitution provides in pertinent part:

Sec. 284. * * * Representation in the legislature shall be based upon population, and such

basis of representation shall not be changed by constitutional amendments.

Sections 1 and 2 of 32 Alabama Code (1958) provide:

> *Section 1. House of representatives.*—The house of representatives of the legislature consists of one hundred and six members, distributed among the several counties as follows: The counties of Autauga, Baldwin, Bibb, Blount, Cherokee, Chilton, Choctaw, Clay, Cleburne, Coffee, Colbert, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dale, DeKalb, Escambia, Fayette, Franklin, Geneva, Greene, Houston, Lamar, Lawrence, Limestone, Macon, Marion, Marshall, Monroe, Pickens, Randolph, Shelby, St. Clair, Washington, and Winston shall each elect one representative. The counties of Barbour, Bullock, Butler, Calhoun, Chambers, Clarke, Elmore, Etowah, Hale, Henry, Jackson, Lauderdale, Lee, Lowndes, Madison, Marengo, Morgan, Perry, Pike, Russell, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker and Wilcox shall each elect two representatives. The counties of Dallas and Mobile shall each elect three representatives. The county of Montgomery shall elect four representatives; and the county of Jefferson shall elect seven representatives.
>
> *Section 2. Senatorial districts.*—The senate of the legislature shall consist of thirty-five members, and the state is divided into thirty-five senatorial districts, as follows: First, Lauderdale and Limestone; second, Lawrence and Morgan; third, Blount, Cullman and Winston; fourth, Madison; fifth, Jackson and Marshall; sixth, Etowah and St. Clair; seventh, Calhoun; eighth, Talladega; ninth, Chambers and Randolph; tenth, Tallapoosa and Elmore; eleventh, Tuscaloosa; twelfth, Fayette, Lamar and Walker; thirteenth, Jefferson; fourteenth, Pick-

ens and Sumter; fifteenth, Autauga, Chilton and Shelby; sixteenth, Lowndes; seventeenth, Butler, Conecuh, and Covington; eighteenth, Bibb and Perry; nineteenth, Choctaw, Clarke and Washington; twentieth, Marengo; twenty-first, Baldwin, Escambia and Monroe; twenty-second, Wilcox; twenty-third, Dale and Geneva; twenty-fourth, Barbour; twenty-fifth, Coffee, Crenshaw, and Pike; twenty-sixth, Bullock and Macon; twenty-seventh, Lee and Russell; twenty-eighth, Montgomery; twenty-ninth, Cherokee and De Kalb; thirtieth, Dallas; thirty-first, Colbert, Franklin and Marion; thirty-second, Greene and Hale; thirty-third, Mobile; thirty-fourth, Clay, Cleburne and Coosa; thirty-fifth, Henry and Houston.

Proposed Constitutional Amendment No. 1 of 1962, Alabama Senate Bill No. 29, Special Session, 1962 (the so-called "67-Senator Amendment") provides (R. 157–159):

> *Enrolled*, An Act, Proposing an amendment to the Constitution of Alabama relating to legislative apportionment.
>
> BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:
>
> *Section 1.* The following amendment to the Constitution of Alabama 1901 is proposed and shall become valid as a part thereof when approved and proclaimed as prescribed by law: *Proposed Amendment 1.*. The legislature of Alabama shall consist of a senator for each county and 106 members of the house of representatives, to be apportioned among the several counties as herein prescribed; provided, that in addition to the above number of representatives each new county hereafter created shall be entitled to at least one representative. 2. At the general election in 1966, and every four years thereafter, a senator shall be elected by the

qualified electors of each county in the state. 3. At the general election in 1966, and every four years thereafter, until the house of representatives is reapportioned as herein provided, the qualified electors of each county in the state shall elect such number of representatives as may be apportioned to the county as follows: The county of Jefferson shall have and elect seventeen representatives; the county of Mobile shall have and elect eight representatives; the county of Montgomery shall have, and elect four representatives; the counties of Calhoun, Etowah, Madison and Tuscaloosa shall each have and elect three representatives; the counties of Dallas, Lauderdale, Morgan, Talladega and Walker shall each have and elect two representatives; and the remaining counties of the state shall each have and elect one representative. 4. On the first day, or within one week thereafter, of the regular session of the legislature in 1971, and every fifth regular session thereafter, the clerk of the house of representatives shall transmit to the secretary of state a statement showing the whole number of persons in each county under the most recent decennial census of the United States, and the number of representatives to which each county will be entitled under an apportionment of the then existing number of representatives by the method known as the method of equal proportions, no county to receive less than one representative. 5. In Section 284 of this Constitution as amended, strike out the last sentence thereof and insert the following sentence: Representation in the house of representatives of the legislature shall be based upon population. 6. Article IX (sections 197–203) of this Constitution is hereby expressly repealed.

Section 2. An election upon the proposed amendment is ordered to be held on the date of the general election next succeeding the final adjournment of the current session of the Legis-

lature. The election shall be held in accordance with the provisions of Sections 284 and 285 of the Constitution of Alabama, as amended, and Chapter 1, Article 18, Title 17 of the Code of Alabama 1940.

Section 3. Notice of the election and of the proposed amendment shall be given by proclamation of the Governor, which proclamation shall be published once a week for four successive weeks next preceding the day appointed for the election in a newspaper in each county of the State. In every county in which no newspaper is published, a copy of the notice shall be posted at each courthouse and post office.

The Alabama Reapportionment Act of 1962, Alabama House Bill No. 59, Special Session, 1962 (the "Crawford-Webb Act") provides (R. 160–162):

Enrolled, An Act, To fix the number of senators and representatives in the legislature, divide the state into senatorial districts, and apportion the senators and representatives among the several districts and counties

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. The senate of the legislature shall be composed of 35 senators representing 35 senatorial districts, each district to elect one senator and no more.

Section 2. The state is hereby divided into 35 senatorial districts as follows:

First, the counties of Lauderdale and Limestone; second, the counties of Lawrence and Morgan; third, the counties of Cullman and Winston; fourth, the county of Madison; fifth, the counties of Jackson and Marshall; sixth, the county of Etowah; seventh, the county of Calhoun; eighth, the county of Talladega; ninth, the counties of Randolph and Chambers;

tenth, the counties of Elmore and Tallapoosa; eleventh, the county of Tuscaloosa; twelfth, the counties of Fayette and Walker; thirteenth, the county of Jefferson; fourteenth, the counties of Pickens and Lamar; fifteenth, the counties of Autauga, Chilton and Shelby; sixteenth, the counties of Monroe and Wilcox; seventeenth, the counties of Butler, Covington and Conecuh; eighteenth, the counties of Bibb and Perry; nineteenth, the counties of Clarke, Choctaw and Washington; twentieth, the counties of Marengo and Sumter; twenty-first, the counties of Baldwin and Escambia; twenty-second, the counties of Blount and St. Clair; twenty-third, the counties of Dale and Geneva; twenty-fourth, the counties of Barbour and Pike; twenty-fifth, the counties of Coffee and Crenshaw; twenty-sixth, the counties of Bullock and Macon; twenty-seventh, the counties of Lee and Russell; twenty-eighth, the county of Montgomery; twenty-ninth, the counties of Cherokee and DeKalb; thirtieth, the counties of Dallas and Lowndes; thirty-first, the counties of Colbert, Franklin and Marion; thirty-second, the counties of Greene and Hale; thirty-third, the county of Mobile; thirty-fourth, the counties of Coosa, Clay and Cleburne; thirty-fifth, the counties of Henry and Houston.

In districts consisting of more than one county, the senators shall not be elected for more than one term consecutively from any one county in the district, but shall reside in and be elected alternately and in turn from each of the counties within such district. The first senator to be elected in such districts shall reside in the county having the largest population, except where that county had the last preceding senator. It is provided, however, that any senator in office on the effective date of this enactment shall be eligible to succeed

himself as a member of the Senate, any other provision of this paragraph to the contrary notwithstanding.

Section 3. The house of representatives of the legislature shall consist of 106 members distributed among the several counties of the state as follows:

The county of Jefferson shall have and elect 12, the county of Mobile 6, and the county of Montgomery 4; the counties of Calhoun, Etowah, Madison and Tuscaloosa 3 each; the counties of Baldwin, Colbert, Cullman, Dallas, Houston, Lauderdale, Lee, Marshall, Morgan, Russell, Talladega and Walker 2 each; and the remaining counties 1 each.

Section 4. This Act shall take effect for the election of senators and representatives at the general election to be held in November 1966, and shall be effective thereafter until the legislature is reapportioned according to law.

Section 5. The provisions of this Act are severable. If any part of this Act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.